Headline News

Andrews & Kurth Secures Third Straight Multi-Million Dollar Arbitration Award for Mobile Energy Services Company, L.L.C. Against Kimberly-Clark Corporation

November 5, 2002

HOUSTON -- The law firm of Andrews & Kurth, L.L.P. announced today this issuance of another arbitration award by the American Arbitration Association (AAA) as part of their ongoing representation of Mobile Energy Services Company, L.L.C. (MESC) against Kimberly-Clark Corporation (K-C). This award is the third rendered in favor of MESC and against K-C relating to the Mobile site contracts in the last 10 months.

This latest action arose after MESC collected $26 million in disputed processing charges and financial adjustment payments from K-C's Tissue Mill in an arbitration decision rendered on January 21, 2002, and $27 million in disputed demand charges from K-C's Pulp Mill in a second arbitration decision, rendered 10 days later. These proceedings resulted from K-C's shut down of pulp-making operations at its Mobile Mill, which required MESC to reconfigure its energy complex to continue to serve the needs of the remaining K-C production operations at the Mobile, Alabama site. MESC, which purchased the energy island assets at the site in 1994, is responsible for supplying power and steam services to the site, which currently represents one of K-C's largest production facilities in North America, producing numerous products under the Scott Tissue label.

The latest disputes arose after K-C paid the two arbitration awards that issued in January. K-C claimed that certain provisions in the parties' agreements, coupled with its arbitration-ordered reimbursement of $17 million in capital costs MESC incurred to install a 35MW condensing turbine generator at the energy complex, entitled it to avoid paying a substantial amount of Demand Charge obligations to MESC for services used by its Mills at the Mobile site. K-C sought a refund more than $8 million in Demand Charges it allegedly overpaid under the contracts, whereas MESC sought more than $2 million in Demand Charges it alleged K-C underpaid. K-C also sought the right to take up to 35MW of power on an ongoing basis from MESC's energy complex without an obligation to pay Demand Charges, sought to limit its obligation to pay Demand Charges going forward, and sought the right to use MESC's electric distribution system to import power on a continuous basis to support its operations. In addition to the actual dollars at issue, the issues on which each side sought declaratory relief had long-term implications for the relations between the parties for the 17 years remaining under the agreements between MESC and K-C, and K-C's obligations to continue to purchase power and steam services used at the site exclusively from MESC.

The decision, rendered November 4, 2002, denied all of K-C's $8 million in Demand Charge refund claims, and awarded MESC the full amount of the $2 million in additional Demand Charges it sought. K-C's claims for declaratory relief and to be allowed access to use MESC's electric distribution system to import power were denied as well. The decision fixed and determined MESC's service capacity to be at levels that should insure that MESC continues to have the exclusive right to supply all of the power and steam needs of K-C's strategic Mobile Tissue Mill in the future, under the Demand Charge framework negotiated in connection with the parties' contracts. "We are pleased to have the latest difficult dispute over K-C's Demand Charge payment obligations resolved completely in favor of our client. Andrews and Kurth was able to see the case completely through the litigation process due to our capabilities of providing full-service legal representation to the energy industry," said partner John Lee. "It is apparent to anyone familiar with this string of disputes that K-C has pulled out all the stops to attempt to find an angle to escape the 25 year exclusive dealing contracts its predecessor, Scott Paper, signed with MESC in 1994 in exchange for $350 million. This decision resolves and should put to rest, once and for all, any remaining doubt over K-C's obligation to pay MESC Demand Charges for the next 17 years based on the terms of the parties' 1994 bargain."

"We are very pleased with the outcome and the hard work performed by Andrews & Kurth's attorneys in dealing with the complex issues of this case," said Jim Stewart, chief executive officer of MESC. "This judgment is definitely a reflection not only of the time and effort needed to resolve the issues presented but also a demonstration of their experience in this field of litigation." Mr. Stewart further stated, "The results of this case have far more importance than just the monetary awards. MESC intends to be around for the long haul, and this award goes a long way toward preserving the full value of the remaining 17 year term of MESC's contract as Kimberly Clark's exclusive energy supplier in Mobile.

"The Andrews & Kurth team representing MESC in these claims included partners Lee and Scott Locher, and associate Liz Wiley. The claims arose under a very complex and technical energy services agreement and master operating agreement entered in connection with the 1994 sale of the energy complex to MESC. K-C was represented in this action by David Stahl and Jonathan Weir of the Eimer Stahl firm in Chicago, in-house counsel Howard Sharfstien, and David Domansky of Preston Gates' Seattle office.

Andrews & Kurth L.L.P. was founded in Houston in 1902 and has 375 lawyers in offices in Austin, Dallas, Houston, Los Angeles, London, New York, The Woodlands and Washington, D.C. The firm's practice areas include appellate, bankruptcy, business transactions, energy, environmental, corporate and securities, labor and employment, litigation, intellectual property, public law, project finance, real estate, structured finance, asset securitization, technology and tax law for U.S. and international clients.

MESC is an unregulated subsidiary of the Southern Company formed in 1994 to acquire the power plant and energy island situated inside the Scott Paper Mill located in Mobile, Alabama. K-C, which acquired Scott by merger in 1995, is a $14 billion global consumer products company that manufactures tissue, personal care and health care products under various brand names.