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2
3 BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

4
5 UM 1002
(Marion County Case No. 01C20598)

6 WAH CHANG,

7 Petitioner,

8 v.

9 PACIFICORP,

10 Respondent.

PACIFICORP'S OPPOSITION TO
WAH CHANG'S MOTION TO
EXTEND CURRENT DEADLINES

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12 In considering Wah Chang's motion to extend the current case deadlines, the Commission
13 should keep in mind that Wah Chang chose to proceed to hearing in this case within seven
14 months from the date it filed its Petition. The Commission issued its Order denying Wah
15 Chang's claims in October 2001, less than ten and one-half months after the Petition was filed.
16 In mid-2002, the Circuit Court ordered the Commission to take additional evidence relating to
17 Wah Chang's claims. Despite the relative rapidity that Wah Chang initially desired, Wah Chang
18 is now asking the Commission to postpone its consideration of this "additional evidence" until
19 *more than four years* after the Circuit Court's order. The delay that Wah Chang seeks is entirely
20 out of proportion to the scope of this proceeding.

21 Moreover, Wah Chang has failed to demonstrate a legitimate need for additional time. It
22 has been more than five months since the Commission returned this matter to active status. *See*
23 *Ruling Dated February 24, 2005*. During that time, PacifiCorp has responded fully and promptly
24 to each of Wah Chang's far-reaching discovery requests. Among other things, PacifiCorp has
25 produced 30,982 pages of hard copy documents, enough to fill 22 bankers' boxes. PacifiCorp has
26 also produced volumes of other documents in electronic format, and has provided detailed

PAGE

1- PACIFICORP'S OPPOSITION TO WAH CHANG'S
MOTION TO EXTEND CURRENT DEADLINES

[24878-0008/PA052210.031]

1 information in response to almost 80 individual data requests. With respect to the tapes of trader
2 conversations that Wah Chang now uses as an excuse to ask for an additional delay, PacifiCorp
3 produced, within a few days after the stay was lifted, copies of all trader conversations that
4 PacifiCorp had previously converted to an easily reviewable format (about 250 conversations).
5 PacifiCorp also agreed, as soon as the stay was lifted, to produce a corporate representative to
6 provide testimony concerning how the data storage tapes that capture the trader conversations are
7 generated and stored. *See PacifiCorp's Letter to Commission dated March 9, 2005.*

8 Wah Chang deposed PacifiCorp's corporate representative more than four months ago
9 and, during that deposition, learned of the many significant obstacles involved in producing and
10 reviewing the tapes at issue. *See Williams Affidavit, Ex. A.* Nevertheless, following this
11 deposition, Wah Chang waited *two and one-half months* to issue a data request asking for copies
12 of certain tapes. PacifiCorp responded to this request within 10 Commission business days and,
13 subject to certain conditions, agreed to produce the requested tapes. *See id.*, Ex. B. Since
14 providing that response, PacifiCorp has gone to great lengths to try to copy the tapes that Wah
15 Chang requested. Although this process has been neither fast nor inexpensive, PacifiCorp has
16 now produced copies of all available tapes for the dates that Wah Chang has requested.¹ While it
17 was working diligently to copy the tapes that Wah Chang requested, PacifiCorp also responded
18 promptly to all additional inquires from Wah Chang about those tapes.

19 Despite PacifiCorp's extensive efforts to timely provide Wah Chang with all of the
20 discovery it has requested, Wah Chang now seeks an additional 90 days in order to convert and
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24 ¹ Until shortly after Wah Chang filed its motion, PacifiCorp had been unable to copy six tapes
25 that are 100 percent full. As soon as PacifiCorp learned that its outside vendor had finally found a way
26 to copy the tapes, it promptly produced those tapes to Wah Chang in addition to the six tapes it produced
previously. Because Wah Chang has not yet sent any tapes to its vendor to be converted, other than one
"test" tape, the fact that PacifiCorp was unable to copy the full tapes until now has not adversely affected
Wah Chang.

1 review the data storage tapes.² Wah Chang also candidly admits that it is likely to request
2 additional delays relating to these tapes. *See* Motion at 6 ("[W]hether [90 days] is unnecessarily
3 long or too short is uncertain."). PacifiCorp estimates that it will take 9,000 person hours to
4 review all the tapes. Williams Affidavit, Ex. B at 3. Based on this estimate, it will take Wah
5 Chang's team of nine³ reviewers 125 eight-hour days—25 five-day work weeks or almost six
6 months—just to listen to these tapes one time through. This estimate makes no allowance for the
7 additional time that Wah Chang will presumably want to use to conduct depositions and prepare
8 and file its direct testimony. *See* Motion at 6. Although it is currently seeking an extension of 90
9 days, giving Wah Chang additional time to review these tapes may delay these proceedings
10 significantly longer.

11 Even ignoring Wah Chang's previous complaints about delay, as well as the inherent
12 prejudice to PacifiCorp of any additional delay, there is no basis for extending these proceedings
13 in order to give Wah Chang more time to review the tapes. The tapes have little, if any, potential
14 relevance to this case. Wah Chang does not assert that even a single one of the 250 trader
15 conversations that PacifiCorp has already produced supports Wah Chang's claims. Nor does
16 Wah Chang assert that any of the trading records, blotters, logs, trade confirmations, or other
17 documents that PacifiCorp has produced suggests that there may be evidence in the tapes that
18 would support the new, limited claims that Wah Chang has obtained leave to pursue in this case.

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21 ² In addition to the tapes, Wah Chang suggests that it needs additional time because PacifiCorp
22 has not yet produced approximately 13,600 emails identified in one of Mr. Stan Watter's affidavits filed
23 with FERC. Wah Chang first asked for these 13,600 emails on June 27, 2005. PacifiCorp has been
24 working since then to complete a reasonable privilege review, and anticipates being able to produce those
25 emails within the next several days. In addition, PacifiCorp previously produced a complete summary of
26 those emails that identifies the sender and receiver of each email and the context within which certain
words appear in the email. PacifiCorp's timely production of these 13,600 emails, therefore, does not
support Wah Chang's request for a delay.

³ Wah Chang's confidentiality agreement with PacifiCorp concerning the tapes requires Wah
Chang to identify anyone who will review the tapes. To date, Wah Chang has identified nine such
individuals.

1 Instead, Wah Chang submits that the audio tapes of *Enron* trader conversations that became
2 public in 2004 "have been a fruitful, and sometimes sensational, source of information about
3 Enron's schemes and its traders' culpability." *See* Motion at 5-6. Wah Chang offers no reason to
4 believe that *PacifiCorp's* tapes may contain similarly "sensational," or even relevant, information
5 about PacifiCorp.


6 Wah Chang is engaged in a classic "fishing expedition." Wah Chang hopes that
7 PacifiCorp's trading tapes will contain some sensational or scandalous conversations by
8 PacifiCorp traders that Wah Chang can use to inflame the Commission's evaluation of
9 PacifiCorp's alleged involvement in the energy crisis. PacifiCorp, however, is not Enron, and
10 Wah Chang offers no support for its asserted hope that such sensational conversations even exist.
11 Wah Chang already has an enormous amount of detailed information—in the form of logs,
12 blotters, and trading confirmations—about PacifiCorp's trading activity during the relevant
13 period. This information should be more than enough for Wah Chang to attempt to prove that
14 PacifiCorp was engaged in some sort of improper activity—if, as Wah Chang now alleges, any
15 such improper activity took place (which it did not). Wah Chang should not be allowed to
16 burden both PacifiCorp and the Commission by further stretching these proceedings out long
17 enough for Wah Chang to review 9,000 hours of trading conversations in the vague hope that
18 those conversation may contain "sensational" information similar to the information contained in
19 Enron's tapes.

20 Wah Chang's right to conduct discovery is not without limits. The Commission ruled
21 almost four years ago that the special contract Wah Chang entered into 1997, because it then
22 believed that market rates would be lower than tariff in 2000 and 2001, was just and reasonable.
23 Wah Chang's desire to have the Commission consider "new" evidence concerning Wah Chang's
24 allegations of market manipulation, first raised in 2002, must be balanced against PacifiCorp's
25 right to finality and to a "just, speedy, and inexpensive determination" of this dispute. *See*
26 ORCP 1 B. The tapes that Wah Chang now seeks 90 days or more to review were available to

1 Wah Chang in 2000 and 2001 when Wah Chang first presented its case to the Commission.
2 Because Wah Chang elected not to pursue this discovery at that time, it has been considerably
3 more difficult than it would have been then for PacifiCorp to give Wah Chang access to the tapes
4 of its trader conversations. PacifiCorp has, nevertheless, timely provided Wah Chang with all of
5 the data that it has requested. Wah Chang should now be required to review that data within the
6 time allotted by the current case schedule—a schedule set with Wah Chang's voluntary
7 cooperation. To the extent Wah Chang cannot complete its review during that time, PacifiCorp
8 should not be forced to incur the additional attorney fees and uncertainty that would necessarily
9 result from giving Wah Chang even more time than the nearly five years it has already had to
10 discover its case. Wah Chang's motion should, therefore, be denied.

11 DATED: August 16, 2005.

12 **PERKINS COIE LLP**

13
14 By 
15 Lawrence H. Reichman, OSB No. 86083
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16 Attorneys for PacifiCorp
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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **PACIFICORP'S OPPOSITION TO WAH CHANG'S MOTION TO EXTEND CURRENT DEADLINES** in UM 1002 (Marion County Case No. 01C20598) on the following named person(s) on the date indicated below by:

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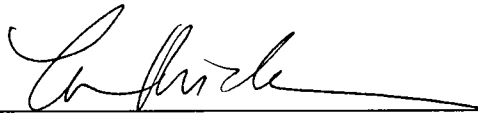
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