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5 BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

6 UM 1002

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8 WAH CHANG,

9 Petitioner,

10 v.

11 PACIFICORP,

12 Respondent.

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14 PACIFICORP'S MOTION TO STRIKE  
15 PETITIONER'S DIRECT TESTIMONY  
16 AND EXHIBITS AND  
17 MEMORANDUM IN SUPPORT

18 Oral Argument Requested

19  
20 **MOTION**

21 PacifiCorp moves for an order striking from the record portions of the direct case filed by  
22 Wah Chang on December 15, 2005, as subsequently corrected and revised, including the Direct  
23 Testimony of Robert McCullough and certain of the exhibits filed therewith.

24 This motion is made on three grounds:

25 (1) The written testimony of Wah Chang's purported expert (and only) witness, Robert  
26 McCullough, Exhibit WC/800 (the "McCullough Testimony"), is largely a presentation of  
alleged "facts" of which Mr. McCullough has no personal knowledge and is therefore precluded  
by the applicable rules of evidence. The McCullough Testimony also includes his opinions on  
matters that are not proper subjects of expert testimony, such as the alleged state of mind and  
credibility of PacifiCorp's employees and witnesses. In addition, the McCullough Testimony  
reproduces other pre-filed exhibits which are inadmissible for the reasons discussed in Section III  
of the subjoined memorandum. PacifiCorp requests that the Commission strike the McCullough

1 Testimony in its entirety and direct Wah Chang to refile the McCullough Testimony limited to  
2 matters as to which he is a competent witness.

3 (2) Wah Chang has submitted as potential exhibits boxes' worth of extraneous material  
4 that should be excluded from the record. Of the 110 exhibits<sup>1</sup> submitted by Wah Chang in  
5 addition to its testimony, 31 of them<sup>2</sup>, totaling more than 100,000 pages, are not referenced in the  
6 McCullough Testimony *at all*.<sup>3</sup> Thirty-one other exhibits<sup>4</sup> are lengthy documents (*e.g.*, complete  
7 deposition transcripts) of which the McCullough Testimony references and relies on only limited  
8 excerpts. These exhibits comprise the equivalent of approximately 17,246 pages of material, of  
9 which Wah Chang cites and relies on only 102 pages, significantly less than 1 percent.<sup>5</sup> Because  
10 there is no indication Wah Chang uses this material in support of its direct case, which is  
11 presented through a single witness, Mr. McCullough, the material has no relevance to the case.  
12 OAR 860-014-0045. Inclusion of this irrelevant material would unnecessarily encumber the  
13 record in violation of OAR 860-014-0060 and unfairly prejudice PacifiCorp by requiring it to  
14 defend against "potential" evidence not relied on in the McCullough Testimony but that could  
15 later be used in Wah Chang's reply testimony or post-hearing briefs to which PacifiCorp has no  
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18 <sup>1</sup> Wah Chang submits two pieces of testimony, WC/800 and WC/900. Only WC/800 is  
19 substantive. WC/900 is testimony of a Lane Powell paralegal and serves only to identify other exhibits.  
20 In addition to these two pieces of testimony, Wah Chang pre-filed 110 exhibits.

21 <sup>2</sup> These exhibits are: WC/818, WC/819, WC/823, WC/832, WC/849, WC/852, WC/902 (two  
22 disks), WC/904 (disk), WC/905 (disk), WC/906 (disk), WC/1000, WC/1001, WC/1002, WC/1003,  
23 WC/1004, WC/1005, WC/1010, WC/1103, WC/1104, WC/1105, WC/1106, WC/1107, WC/1108,  
24 WC/1110, WC/1118, WC/1119, WC/1121, WC/122, WC/1123, WC/1124, and WC/1127.

25 <sup>3</sup> See Declaration of Susan K. Roberts, ¶ 5.

26 <sup>4</sup> These exhibits are: WC/803, WC/806, WC/808, WC/813, WC/821, WC/822, WC/824,  
WC/829, WC/836, WC/837, WC/839, WC/841, WC/848, WC/863, WC/901, WC/903, WC/907,  
WC/1006, WC/1007, WC/1008, WC/1009, WC/1100, WC/1101, WC/1102, WC/1109, WC/1111,  
WC/1112, WC/1113, WC/1117, WC/1125, and WC/1126.

<sup>5</sup> See Declaration of Susan K. Roberts, ¶ 6.

1 opportunity to respond. Any probative value of the 31 exhibits that Wah Chang does not even  
2 rely on for its direct case and the 31 other exhibits as to which Wah Chang relies on only limited  
3 excerpts is substantially outweighed by the prejudice to PacifiCorp of not striking the material.

4 (3) A substantial majority of Wah Chang's exhibits (61) are hearsay or otherwise  
5 unreliable, and not subject to any exception that would permit their use by Wah Chang in this  
6 proceeding.<sup>6</sup> Wah Chang's "case" against PacifiCorp chiefly consists of trying to make  
7 PacifiCorp appear guilty by association with Enron. To that end, Wah Chang has prefiled as  
8 exhibits numerous documents apparently obtained *from Enron*, including purely internal emails  
9 and presentations, that are unreliable, inadmissible hearsay. Many of these exhibits are  
10 reproduced in part or in their entirety in Mr. McCullough's written testimony. Thus, the  
11 Commission should strike not only the exhibits, but also the portions of Mr. McCullough's  
12 testimony that quote or set forth the inadmissible exhibits.

### 13 MEMORANDUM

14 This matter is before the Commission pursuant to a July 23, 2002 order of the Marion  
15 County Circuit Court granting Wah Chang's Motion for Leave to Present Additional Evidence  
16 regarding (1) manipulation of the Western wholesale electricity markets in 2000-2001 and  
17 (2) certain complaints filed by PacifiCorp with FERC.<sup>7</sup> Wah Chang presented its direct  
18 testimony on December 15, 2005 (as corrected and supplemented on December 29, 2005 and  
19 January 3, 2006). Wah Chang's additional evidence consists of the testimony of its consultant,  
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22 <sup>6</sup> These exhibits are: WC/803, WC/804, WC/806, WC/807, WC/808, WC/809, WC/811,  
23 WC/812, WC/813, WC/814, WC/815, WC/818, WC/819, WC/820, WC/821, WC/822, WC/823,  
24 WC/824, WC/825, WC/826, WC/827, WC/828, WC/829, WC/830, WC/832, WC/834, WC/836,  
25 WC/837, WC/838, WC/839, WC/840, WC/841, WC/842, WC/844, WC/845, WC/846, WC/847,  
WC/848, WC/851, WC/852, WC/853, WC/854, WC/855, WC/857, WC/858, WC/859, WC/860,  
WC/862, WC/863, WC/864, WC/866, WC/867, WC/868, WC/1100, WC/1101, WC/1102, WC/1103,  
WC/1104, WC/1105, WC/1107, WC/1108, WC/1109, and WC/1117.

26 <sup>7</sup> Mr. McCullough's testimony does not address the second issue. Wah Chang appears to have  
decided to present additional evidence as to only the first of these two issues.

1 Robert McCullough, and a large number of exhibits. As demonstrated below, Mr. McCullough's  
2 testimony is improper in several respects. In addition, the vast majority of the 110 exhibits  
3 submitted by Wah Chang are inadmissible because either (1) they are irrelevant or they include  
4 extraneous material, or (2) they are hearsay and are otherwise unreliable.

5 **I. MR. MCCULLOUGH'S TESTIMONY IS NEITHER COMPETENT**  
6 **FACTUAL TESTIMONY NOR APPROPRIATE EXPERT OPINION**

7 **A. Legal Standard**

8 The admission of evidence in this proceeding is governed by OAR 860-014-0045(1),  
9 which provides:

10 (1) Relevant evidence:

11 (a) Means evidence tending to make the existence of any fact at  
12 issue in the proceeding more or less probable than it would be without the  
evidence;

13 (b) Is admissible if it is of a type commonly relied upon by  
14 reasonably prudent persons in the conduct of their serious affairs; and

15 (c) May be excluded if the probative value is substantially  
16 outweighed by the danger of unfair prejudice, confusion of the issues, or  
by undue delay.

17 Although the Commission has not specifically adopted the Oregon Rules of Evidence  
18 ("ORE"), the Commission routinely applies those rules, and the cases that have addressed them,  
19 in rendering its decisions. *See, e.g.*, Order No. 04-379 (applying Oregon Rule of Evidence 503).  
20 Particularly in technical areas, such as attorney-client privilege and expert testimony, the ORE  
21 provide guidelines and well reasoned markers for the Commission to apply in considering  
22 evidentiary obligations.

23 ORE Rule 602, regarding fact witness testimony, and Rule 703, regarding expert  
24 testimony, are particularly instructive regarding the defects in Mr. McCullough's testimony.  
25 Rule 602 requires that a witness have personal knowledge of the facts about which he or she is  
26 testifying. *See* Rule 602 ("Subject to the provisions of [Rule 703], a witness may not testify to a

1 matter unless evidence is introduced sufficient to support a finding that the witness has personal  
2 knowledge of the matter.") "Personal knowledge," for this purpose, means that the witness  
3 actually "perceived" or "observed" the fact. *See* 1981 Conference Committee Commentary to  
4 Rule 602 ("This rule would . . . prevent a witness from testifying to the subject matter of [a]  
5 hearsay statement, as the witness has no personal knowledge of it.").

6 The personal knowledge requirement for fact testimony is not affected by  
7 Mr. McCullough's status as a proposed expert. Although an expert witness may base an opinion  
8 on facts as to which he has no personal knowledge, an expert witness may not serve to introduce  
9 such facts into the record. If the underlying facts are to be admitted into the record, that must be  
10 done by a competent witness. *McCathern v. Toyota Motor Corp.*, 332 Or. 59, 70, 23 P.3d 320,  
11 327 (Or. 2001) ("[Rule] 703 does not render otherwise inadmissible evidence admissible merely  
12 because it was the basis for the expert's opinion.").

13 Rule 703 also requires that expert opinion be limited to that which will "assist the trier of  
14 fact to understand the evidence or to determine a fact in issue." Thus, expert testimony may not  
15 simply tell the fact-finder what conclusion to reach. *United States v. Whitted*, 11 F.3d 782, 785  
16 (8th Cir. 1993)(expert opinion that merely tells the fact-finder what conclusion to reach is not  
17 "helpful"). It is also improper for an expert to opine on the state of mind a party or the credibility  
18 of witnesses. *See Weinstein's Federal Evidence*, § 702.03[3] (Joseph M. McClaughlin, ed.,  
19 Matthew Bender 2d ed. 1997)(state of mind of one of the parties and credibility of witness are  
20 not amenable to expert testimony) and § 702.06[1] ("The courts have jealously guarded the fact-  
21 finder's exclusive power to determine credibility issues against the attempted intrusion of expert  
22 witnesses.").

23 **B. Wah Chang's Expert Witness May Not Testify To Facts Of Which He**  
24 **Has No Personal Knowledge**

25 The purpose of the current phase of this proceeding is to give Wah Chang the opportunity  
26 to "present additional evidence" regarding (1) manipulation of the Western wholesale electricity

1 markets in 2000-2001 and (2) certain complaints filed by PacifiCorp with FERC. Wah Chang  
2 has chosen to limit its substantive presentation to the testimony of a single witness, Mr.  
3 McCullough, who undisputedly has no personal knowledge of most of the evidence that he  
4 purports to present.

5 The matters as to which Mr. McCullough seeks to present factual evidence include:  
6 Enron's trading practices; PacifiCorp's trading practices; the trading practices of other parties,  
7 including the City of Redding and Modesto Irrigation District; and the relationship and  
8 communications between PacifiCorp and these other parties. Mr. McCullough also seeks to  
9 introduce documentary evidence from these parties' records, such as accounting and trading  
10 records, emails, and trading conversations. Mr. McCullough, however, has no personal  
11 knowledge of any of these matters. Moreover, Mr. McCullough goes so far as to *speculate* as to  
12 the existence of facts for which no evidence is provided. For example, after noting that no  
13 recording exists of trader conversations for a given day, he speculates that a certain conversation  
14 occurred and that "it must have been quite interesting." WC/800, McCullough/14. Even worse,  
15 most of the evidence recited by Mr. McCullough is not only beyond his personal knowledge, it is  
16 unreliable hearsay, such as the countless emails, phone conversations, and third-party records  
17 excerpted in Mr. McCullough testimony (this issue is discussed in Section III).

18 As an expert witness, Mr. McCullough opines as to the causes of the western energy  
19 market crisis of 2000-2001. He also offers opinions as to the quality of PacifiCorp's  
20 management, and the knowledge and motivations of PacifiCorp and its employees (*e.g.*, "At a  
21 minimum, PacifiCorp's management was reckless in a dangerous market" (WC/800,  
22 McCullough/2), and "PacifiCorp profited from a fraudulent scheme that they knew was  
23 fraudulent" (WC/800, McCullough/115)). (The impropriety of some of these matters as the  
24 subject of expert testimony is addressed in the following section.)

25 Thus, Mr. McCullough presents both factual evidence and opines as to the conclusions  
26 the Commission should draw from the evidence. In offering factual evidence, Mr. McCullough

1 should be held to the ordinary standards of witness competence; that is, he must have personal  
2 knowledge of the facts about which he is testifying. *See* Rule 602. Mr. McCullough is not  
3 allowed to introduce evidence simply because he is an expert who may have relied on such  
4 evidence. *See* Rule 703. Much of Mr. McCullough's testimony is a statement of facts that are  
5 beyond his personal knowledge. He plainly did not "perceive" or "observe" the dozens of  
6 transactions that he describes, nor can he personally authenticate most of the documents offered  
7 as exhibits. Wah Chang attempts to use Mr. McCullough to inject into the record, under the  
8 guise of "expert opinion," evidence that Wah Chang is not entitled to present. This should not be  
9 permitted. *See McCathern v. Toyota Motor Corp.*, 332 Or. 59, 70, 23 P.3d 320, 327 (Or. 2001)  
10 ("[Rule] 703 does not render otherwise inadmissible evidence admissible merely because it was  
11 the basis for the expert's opinion."); *Maklakiewicz v. Berton* 652 So.2d 1208, 1209 (Fla. Ct.  
12 App. 1995) ("Although an expert witness is entitled to render an opinion premised on  
13 inadmissible evidence when the facts and data are the type reasonably relied on by experts on the  
14 subject, the witness may not serve merely as a conduit for the presentation of inadmissible  
15 evidence.")

16 Virtually every page of Mr. McCullough's written testimony, aside from the summary of  
17 his qualifications, includes factual assertions for which Mr. McCullough is not a competent  
18 witness. The Commission, therefore, should strike Mr. McCullough's testimony in its entirety.  
19 Should Wah Chang choose to limit Mr. McCullough's testimony to proper expert opinion, it  
20 should be required to refile such appropriate testimony.

21 **C. Mr. McCullough May Not Present Expert Opinion as to PacifiCorp's**  
22 **Alleged State of Mind or Tell the Commission What Conclusions To**  
23 **Reach**

24 If Mr. McCullough's testimony is considered as expert testimony, Mr. McCullough's  
25 testimony is improper because it addresses the alleged state of mind and credibility of  
26 PacifiCorp's employees and witnesses and tells the Commission what conclusions it should reach  
in this case. As discussed above, courts do not permit experts simply to tell the finder of fact

1 what conclusions should be reached. Mr. McCullough does precisely that, and there is no  
2 pretense to the contrary. *See* WC/800, McCullough/148 ("Q: What conclusions should the  
3 hearing officer draw from your testimony?").

4 Mr. McCullough also opines (or simply speculates) throughout his testimony as to the  
5 motives and states of mind of PacifiCorp's employees. For example, at page 2 he asserts that  
6 PacifiCorp was "reckless" and that its management had a "casual attitude." At page 14 he offers  
7 sheer speculation as to what PacifiCorp's employees' motives might have been for participating in  
8 certain transactions. Also at page 14 he opines that PacifiCorp traders "should have immediately  
9 recognized" that something unusual was going on. None of this is a proper subject of expert  
10 testimony. *See, e.g., Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992)(expert opinion  
11 regarding state of mind is not admissible as not helpful to fact-finder); *Weinstein's Federal*  
12 *Evidence*, § 702.03[3]. Mr. McCullough also purports to opine on the credibility of other  
13 PacifiCorp employees and witnesses (*e.g.*, page 143), which is improper. *See United States v.*  
14 *Barnard*, 490 F.2d 907, 912 (9th Cir. 1973); *Weinstein's Federal Evidence*, § 702.06[1] ("The  
15 courts have jealously guarded the fact-finder's exclusive power to determine credibility issues  
16 against the attempted intrusion of expert witnesses.").

17 The McCullough Testimony is heavily laced with opinions unsupported by the underlying  
18 alleged facts, and unsupported speculation on improper subjects. The overall effect of the  
19 McCullough Testimony is (1) to present unauthenticated documentary material created by third  
20 parties, (2) to interpret and speculate as to what those third parties were doing, thinking, and  
21 intending, (3) to speculate regarding what Mr. McCullough believes happened, and (4) to tell the  
22 Commission what to conclude regarding all of these alleged "facts." These are improper subjects  
23 of expert testimony. For this additional and independent reason, the McCullough Testimony  
24 should be stricken.



1 **II. WAH CHANG HAS IMPROPERLY SUBMITTED AS EXHIBITS**  
2 **THOUSANDS OF PAGES OF IRRELEVANT MATERIAL**

3 **A. Legal Standard**

4 The admission of evidence in this proceeding is governed by OAR 860-014-0045(1),  
5 which provides for the admission of "relevant" evidence, unless its "probative value is  
6 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by undue  
7 delay." In addition, OAR 860-014-0060 requires parties to offer as exhibits only the relevant  
8 portions of documents that also contain irrelevant material. OAR 860-014-0060(2) provides:

9 When relevant evidence offered by a party is included in a book, paper, or  
10 document containing irrelevant material, the party offering the exhibit  
must plainly designate the matter offered:

11 (a) If irrelevant material is included in the exhibit that would  
12 encumber the record, the exhibit may not be received in evidence.  
13 The exhibit may be marked for identification, and, if properly  
authenticated, the relevant matter may be read into the record;

14 (b) If the Commission or ALJ directs, a copy of the relevant  
15 portions of the exhibit may be received as evidence. The offering  
16 party must offer copies of the document to all other parties  
17 appearing at the hearing. The parties must be afforded an  
opportunity to examine the exhibit and to offer in evidence other  
portions of the exhibit found to be relevant.

18 Under these rules, the party offering documentary evidence has the burden to establish the  
19 relevance of the matter offered. The Commission should strike 62 of Wah Chang's 110 exhibits  
20 because (1) 31 of them are not cited at all in Mr. McCullough's testimony and, thus, are not  
21 shown to be relevant and (2) 31 other exhibits are voluminous documents as to which only  
22 limited parts are even potentially relevant. Even if they had some relevance, any probative value  
23 of these exhibits is substantially outweighed by the prejudice to PacifiCorp of having voluminous  
24 material in the record that Wah Chang does not utilize in its direct testimony. PacifiCorp is  
25 prejudiced by not having adequate notice regarding which evidence it must respond to in its  
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1 response testimony, since it would be virtually impossible for PacifiCorp to respond to  
2 everything that Wah Chang has submitted.

3 **B. Wah Chang Offers Dozens of Exhibits Without Showing Their**  
4 **Relevance**

5 Wah Chang filed its direct case on December 15, 2005, through the testimony of only one  
6 witness, Robert McCullough. Together with its testimony, Wah Chang has submitted 110  
7 exhibits, but Mr. McCullough references only 79 of the 110 exhibits in his testimony. The  
8 remaining 31 exhibits are not mentioned in his testimony (or anywhere else) even once.<sup>8</sup>  
9 Because Mr. McCullough does not rely upon these exhibits, Wah Chang fails to show that they  
10 are relevant—the threshold for admissibility under OAR 860-014-0045. It is Wah Chang's  
11 burden to establish the relevance of its exhibits. Since these 31 exhibits are not cited or  
12 discussed in testimony, Wah Chang does not show how they "tend to make the existence of any  
13 fact at issue in the proceeding more or less probable." OAR 860-014-0045(1)(a). In fact, such  
14 unused exhibits have no "probative value" whatsoever, while the prejudice to PacifiCorp of their  
15 inclusion in the record is substantial (this is discussed in Section II.D. below). OAR 860-014-  
16 0045(1)(c).

17 These 31 exhibits include 1,000 pages of paper, as well as five CDs holding data of  
18 equivalent to 99,718 printed pages.<sup>9</sup> The uncited exhibits include, among others, 49 pages of  
19 attachments to an affidavit (WC/849); a 12-page Enron data request (WC/852); five CDs  
20 (WC/902 and WC/904-906); and seven complete deposition transcripts totaling more than 700  
21 pages (WC/1000-1005 and WC/1010).

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25 <sup>8</sup> See Declaration of Susan K. Roberts, ¶ 5.

26 <sup>9</sup> See Declaration of Susan K. Roberts, ¶ 5.

1           **C.       Dozens More Exhibits Are Relevant Only in Limited Part**

2           In addition to offering 31 exhibits that Mr. McCullough does not cite or discuss at all,  
3 Wah Chang offers 31 other lengthy exhibits, including several more complete deposition  
4 transcripts, that Mr. McCullough cites only in limited part. Rather than simply attach the  
5 relevant excerpts, as required by the Commission's rules, Wah Chang has included the exhibits in  
6 their entirety, adding thousands of superfluous pages to the record. OAR 860-014-0060.

7           These 31 exhibits are set forth in Appendix 1, which shows that of the approximately  
8 17,246 pages that these exhibits consume in the record, Wah Chang relies upon about 102 pages,  
9 or significantly less than 1 percent of the offered material.<sup>10</sup> These exhibits include, for example:

- 10           • A disk apparently containing audio recordings and transcripts of 244 different  
11           trader conversations, of which Wah Chang cites no more than a handful  
12           (WC/904); the 446-page transcript is separately included as WC/903;
- 13           • recordings and a 248-page transcript of 285 other trader conversations, of which  
14           Wah Chang cites no more than a handful (WC/901-902);
- 15           • a DVD containing 8,321 pages of data produced by PacifiCorp, which Wah Chang  
16           cites once, merely to note its existence (WC/907);
- 17           • a disk containing over 6,000 pages of emails by Tim Belden of Enron (WC/824);  
18           Wah Chang cites only one of them (see Appendix 1);
- 19           • a 54-page statement to Congress, from which Wah Chang quotes one sentence  
20           (WC/863);
- 21           • four complete deposition transcripts, totaling 566 pages, from which Wah Chang  
22           quotes a total of 28 pages (WC/1006-1009); and
- 23           • 23 pages of magazine articles, of which Wah Chang cites three pages (WC/1117).

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<sup>10</sup> See also Declaration of Susan K. Roberts, ¶ 6.

1 This overinclusion of material suffers from the same relevance problem as the submission  
2 of exhibits that are not referenced at all in the direct testimony. Even assuming that all the cited  
3 portions of these 31 exhibits are relevant, the Commission's rules specifically prohibit  
4 encumbering the record by submitting irrelevant material together with relevant material as part  
5 of a single document. Pursuant to OAR 860-014-0060(2), documents that include both relevant  
6 and irrelevant information may not be offered or received in evidence. A party may not build a  
7 "record" by submitting voluminous documents of which only limited portions are relevant. At  
8 most, "[i]f the Commission or ALJ directs," the party may submit the relevant portions of such  
9 documents as evidence. The party offering the exhibits must also give the other parties the  
10 opportunity to examine and offer additional relevant portions of the documents.

11 All of the exhibits listed in Appendix 1 are improperly filed because they include  
12 extraneous material. The Commission should strike these clearly excessive exhibits and order  
13 Wah Chang to refile the portions that Wah Chang actually wishes to rely on to support its case.

14 **D. Wah Chang's Submission of Irrelevant Material Is Prejudicial to**  
15 **PacifiCorp**

16 OAR 860-014-0045(1)(c) allows the Commission to exclude relevant evidence if its  
17 probative value is substantially outweighed by the danger of unfair prejudice, confusion of the  
18 issues, or undue delay. As shown above, out of 110 exhibits, Wah Chang includes 31 exhibits  
19 that it does not discuss at all and 31 other exhibits for which only limited portions of a much  
20 larger document are cited. In total, PacifiCorp estimates that Wah Chang has improperly  
21 encumbered the record to the tune of 18,246 physical pages plus the equivalent of 99,718 pages  
22 of electronic data.

23 By not using them as support for the testimony, Wah Chang utterly fails to identify why  
24 the 31 uncited exhibits or the uncited portions of the 31 other exhibits have any probative value.  
25 Even if they did have some probative value, it is substantially outweighed by unfair prejudice to  
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1 PacifiCorp. PacifiCorp has only one opportunity to respond Wah Chang's direct case.<sup>11</sup> It is not  
2 practical, if not impossible, for PacifiCorp to respond or specifically object to everything that  
3 Wah Chang presently offers in the record. PacifiCorp is entitled to know what specific evidence  
4 Wah Chang intends to rely upon before PacifiCorp files its responsive evidence.

5 As examples, Wah Chang has submitted eight disks containing voluminous data that is  
6 not used. Two of these disks contain numerous Enron "Inc Sheets" (WC/803) and "Death Star  
7 Templates" (WC/808); Wah Chang cites just a handful of each (*see* Appendix 1). Another disk  
8 contains over 6,000 pages of emails by Tim Belden of Enron (WC/824); Wah Chang cites only  
9 one of them (*see* Appendix 1). Yet another disk (WC/907) contains approximately 8,321 pages  
10 of "blotter" sheets produced by PacifiCorp in response to Wah Chang's discovery requests. Wah  
11 Chang does not cite to any specific data; it merely notes that the data exists. (*See* Appendix 1.)  
12 Wah Chang also offers, in their entirety, eleven deposition transcripts (WC/1000-1010), totaling  
13 nearly 1,300 pages, of which it cites only four transcripts even once, and those only in small  
14 portions.

15 If Wah Chang does not limit its filing to the portions of these voluminous exhibits that it  
16 intends to rely upon, PacifiCorp has no notice of what evidence it must rebut or otherwise  
17 respond to. PacifiCorp would be unfair prejudiced by being required to guess at what portions of  
18 these exhibits Wah Chang may later choose to rely upon and respond to only those, and it would  
19 be impractical, and further burden the record, for PacifiCorp to respond to everything that Wah  
20 Chang has filed.

21 PacifiCorp is prejudiced by Wah Chang's offering entire deposition transcripts at this  
22 time, instead of the specific portions Wah Chang intends to rely upon. Each of the transcripts

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25 <sup>11</sup> Pursuant to the August 18, 2005 scheduling order, PacifiCorp must submit its reply testimony  
26 by May 18, 2006. Wah Chang may submit rebuttal testimony by June 29, 2006. The hearing will occur  
on July 24-26, 2006. Thus, PacifiCorp has one opportunity to present its factual case in response to the  
additional evidence that Wah Chang has spent years developing, and Wah Chang will have the final  
written word.

1 includes objections interposed by PacifiCorp's counsel to questions asked by Wah Chang's  
2 counsel. Wah Chang cannot be permitted to bring into the record, willy nilly, answers to  
3 deposition questions if the questions are objectionable based on form, foundation, or privilege.  
4 Without specification of the portions of the transcripts Wah Chang intends to rely upon,  
5 PacifiCorp does not know which objections it needs to present to the Commission for decision.  
6 The offering of these transcripts is prejudicial to PacifiCorp because of the many objectionable  
7 questions included therein. So that PacifiCorp may have adequate notice of what evidence it  
8 must respond and object to in this proceeding, the complete deposition transcripts should be  
9 stricken and Wah Chang should be directed to wait until the hearing to offer only those excerpts  
10 of deposition transcripts on which it relies.

11 Offering the eleven full deposition transcripts at this time also violates the Commission's  
12 rules. OAR 860-014-0065(6) provides:

13 Unless received in evidence by the Commission or ALJ, no portion of a  
14 deposition may constitute a part of the record in the proceeding. A party  
15 may object at the hearing in the proceeding to receiving in evidence any  
16 portion of the deposition. Upon request, the party examining the deponent  
must provide the Commission or ALJ a transcribed copy of any deposition  
taken in the proceeding.

17 This rule effectively prohibits a party from seeking to make any portion of a deposition transcript  
18 part of the record until the hearing. Thus, it is improper for Wah Chang to have offered entire  
19 deposition transcripts as exhibits in its direct case. Rather, the Commission's rules contemplate  
20 that portions of such transcripts may be offered only at the hearing, in connection with cross-  
21 examination of a witness.

22 Inclusion of so much irrelevant material also presents the likelihood of confusion of the  
23 issues and undue delay. Because the McCullough Testimony provides no discussion of the 31  
24 uncited exhibits or any explanation of how they are relevant to Wah Chang's case, the  
25 Commission has no way of knowing what these documents contain, short of physically reviewing  
26 every page as well as the massive amount of data on the disks Wah Chang has submitted. The

1 Commission faces the same daunting task with respect to the 31 exhibits that include only a  
2 small amount of relevant information. Inclusion in the record of so much irrelevant information  
3 will tend to confuse the issues and cause delay as the Commission tries to sort through the data  
4 unaided by Wah Chang's testimony, in an effort to render a decision based on the totality of the  
5 record. All of this confusion and delay works PacifiCorp's prejudice, since it is unable to identify  
6 and rebut the *relevant* evidence that Wah Chang relies upon.

7 **III. MUCH OF WAH CHANG'S EVIDENCE IS HEARSAY,  
8 LACKS FOUNDATION, OR IS OTHERWISE UNRELIABLE**

9 Wah Chang offers a number of exhibits that are hearsay, lack proper foundation, or are  
10 otherwise unreliable. Some of these are quoted or even completely reprinted in Mr.  
11 McCullough's written testimony. The hearsay exhibits should be stricken, as should the portions  
12 of Mr. McCullough's testimony that quote or reprint them.

13 **A. Legal Standard**

14 Under OAR 860-014-0045(1), evidence is admissible in a Commission proceeding if it is  
15 "of a type commonly relied upon by reasonably prudent persons in the conduct of their serious  
16 affairs." Even evidence that meets that standard should not be admitted if its "probative value is  
17 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by undue  
18 delay." *Id.* As discussed above, the rules of evidence regarding hearsay that apply to judicial  
19 proceedings are instructive in guiding the exercise of the Commission's judgment as to whether  
20 evidence is reliable or prejudicial and should be admitted.

21 Hearsay is a "statement, other than one made by the declarant while testifying at the trial  
22 or hearing, offered in evidence to prove the truth of the matter asserted." ORE 801(3). A  
23 "statement" is defined as either "[a]n oral or written assertion." Rule 801(1)(a). Under Rule 802,  
24 except as specifically allowed by the rules of evidence, "[h]earsay is not admissible."

25 It is true that hearsay, and other inadmissible evidence, may form the basis for expert  
26 opinion testimony under ORE 703. It is well settled, however, that an expert's use of such

1 material does not render it admissible. *McCathern v. Toyota Motor Corp.*, *supra*. Thus,  
2 regardless of whether Mr. McCullough may rely on hearsay evidence in forming his opinion, the  
3 evidence is still hearsay and should not be admitted.

4 **B. Dozens of Wah Chang's New Exhibits Are Hearsay**

5 As demonstrated in Appendix 2, 61 of Wah Chang's 110 exhibits are hearsay because  
6 they are (1) statements by non-parties made outside this proceeding, (2) that are offered by Wah  
7 Chang to prove the truth of the matter asserted. Appendix 2 describes each exhibit and refers to  
8 the page in Mr. McCullough's testimony where each exhibit is discussed so that the Commission  
9 may see that each is offered for the truth of the matters asserted therein.<sup>12</sup>

10 While it is impractical in this limited space to discuss each exhibit in detail, several  
11 examples are illustrative. Thirty-one of the 61 hearsay exhibits are Enron records, including  
12 emails, presentations, handwritten notes, and transaction records. Wah Chang cites these Enron  
13 records to prove the truth of the matters asserted in those records, *i.e.*, the nature and scope of  
14 Enron's trading activities, including specific transactions, and PacifiCorp's alleged role in those  
15 activities and transactions. These 31 records include:

- 16 • Ten exhibits including thousands of Enron emails<sup>13</sup>;
- 17 • Eleven internal Enron transaction records or other potential business records,  
18 without any testimony by the custodian of those records or any other witness  
19 qualified to establish their reliability (*see* Rule 803(6))<sup>14</sup>; and

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22 <sup>12</sup> Wah Chang's reliance on these documents is casual and indiscriminate. For example, one page  
23 of handwritten notes (WC/846) is embedded in its entirety into Mr. McCullough's testimony at page 85,  
without even a citation.

24 <sup>13</sup> WC/814, WC/815, WC/824, WC/825, WC/826, WC/828, WC/830, WC/834, WC/838, and  
25 WC/1107.

26 <sup>14</sup> WC/803, WC/804, WC/811, WC/832, WC/842, WC/844, WC/855, WC/858, WC/859,  
WC/860, and WC/862.



1           • Nine presentations, notes, memoranda, and other documents prepared by Enron or  
2           its counsel.<sup>15</sup>

3           In addition to the Enron documents, Wah Chang offers 32 other hearsay documents,  
4 including:

- 5           • Six transcripts of non-PacifiCorp trader conversations (offered to prove that the  
6           discussed events occurred)<sup>16</sup>;
- 7           • Five items of correspondence (offered to prove that events discussed in the  
8           correspondence occurred)<sup>17</sup>;
- 9           • Four charts, of indeterminate origin, purporting to summarize or describe  
10          transactions or other information (offered to show that the transactions  
11          occurred)<sup>18</sup>;
- 12          • Three plea agreements and an Agreement and Stipulation<sup>19</sup>; and
- 13          • Magazine articles.<sup>20</sup>

14           Much of this material is not "of a type commonly relied upon by reasonably prudent  
15 persons in the conduct of their serious affairs." OAR 860-014-0045(1). In particular, the  
16 Commission should not be willing to rely on the Enron records for the truth of the matters  
17 asserted therein without any supporting or corroborating evidence to indicate their reliability.  
18 Moreover, even evidence that meets that standard should not be admitted if its "probative value  
19 is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by  
20

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21           <sup>15</sup> WC/806, WC/808, WC/820, WC/822, WC/827, WC/829, WC/846, WC/854, and WC/857.

22           <sup>16</sup> WC/812, WC/813, WC/819, WC/821, WC/823, WC/836.

23           <sup>17</sup> WC/840, WC/841, WC/1103, WC/1104, WC/1108.

24           <sup>18</sup> WC/807, WC/842, WC/851, WC/853.

25           <sup>19</sup> WC/848, WC/1101, WC/1102, WC/1103.

26           <sup>20</sup> WC/1117.

1 undue delay." *Id.* PacifiCorp would be severely prejudiced by the Commission's consideration  
2 of evidence in circumstances where PacifiCorp has no opportunity whatsoever to examine the  
3 persons actually responsible for creation of these documents. Without Wah Chang offering  
4 appropriate authenticating witnesses, PacifiCorp is prejudiced by its inability to establish the  
5 circumstances surrounding the creation of these hearsay documents or to adduce any additional  
6 or potentially contradictory evidence from the documents' creators. This prejudice outweighs any  
7 probative value of these hearsay documents.

8 **C. Other Exhibits Are Submitted Without Foundation or Authentication**

9 At least eleven exhibits suffer from an independent and alternative defect: they are not  
10 properly authenticated. Wah Chang has submitted several documents, including charts or other  
11 compilations of data, for which Mr. McCullough does not explain the origin or otherwise  
12 authenticate the documents. The record is silent on how these documents came to exist.<sup>21</sup> These  
13 have, quite simply, no indicia of reliability and should be excluded from the record.

14 **IV. CONCLUSION**


15 For the foregoing reasons, PacifiCorp respectfully requests: (1) that the Commission  
16 strike the entirety of Mr. McCullough's testimony; (2) that the Commission strike the 31 exhibits  
17 that Mr. McCullough does not reference to support his testimony (described in Section II.B  
18 above); (3) with respect to the 30 lengthy exhibits that Wah Chang cites only in minuscule part  
19 (described in Section II.C above), that the Commission strike those exhibits from the record and  
20 order Wah Chang to refile only the cited excerpts of those exhibits, consistent with the  
21 Commission's rules; and (4) that the Commission strike the 61 hearsay and otherwise unreliable  
22 exhibits and the portions of Mr. McCullough's testimony that quote these exhibits (described in  
23 Section III above).

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24  
25  
26 <sup>21</sup> These are WC/807, WC/808, WC/811, WC/832, WC/842, WC/844, WC/851, WC/853,  
WC/854, WC/860, and WC/862.

1 DATED: March 16, 2006.

2 **PERKINS COIE LLP**

3   
4 By \_\_\_\_\_

5 Lawrence H. Reichman, OSB No. 86083

6 Christopher L. Garrett, OSB No. 03100

7 Attorneys for PacifiCorp

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**APPENDIX 1**

**WAH CHANG EXHIBITS IMPROPERLY SUBMITTED IN THEIR ENTIRETY**

<b>Exhibit</b>	<b>Description</b>	<b>Format</b>	<b>No. of pages in exhibit</b>	<b>No. of pages cited</b>	<b>Location of citations in McCullough testimony</b>
WC/803	Enron Inc Sheets (on disk)	Disk	141	8 "inc sheets"	pp. 12:7, 21, 50:3-15, 51:1-10, 117:1-119:7, 138:14-25, 140:1-10, 146:1-8
WC/806	Tim Belden Presentation	Paper	45	1	pp. 17:5, 21:14
WC/808	Death Star Templates (on disk)	Disk	600	8 templates	pp. 21, 22:14-20, 23, 52:6-25, 109:15-18
WC/813	City of Redding Conversations	Paper	34	1	p. 29
WC/821	City of Redding Conversations	Paper	37	4	pp. 23:13, 96:4-10, 96:13-97:18, 115:1-5
WC/822	Tim Belden Presentation	Paper	54	0	p. 25:5
WC/824	Tim Belden E-mails (on disk)	Disk	6,368	1	p. 25:11
WC/829	Steve C. Hall E-mail Attaching Draft Memorandum	Paper	27	1	pp. 30:4, 53:3-22
WC/836	Reliant Trader Conversations	Paper	36	1-2	p. 33-34
WC/837	Testimony of Ann M. Hatcher on Behalf of Silicon Valley Power in FERC Dockets	Paper	34	1	p. 34:23-35:6
WC/839	Order on Complaint Utah Associated Municipal Power Systems	Paper	11	0	p. 66:5
WC/841	Letter from Harvey L. Reiter to Donald Gelinias, with attached Affidavit of Arlen Orchard	Paper	17	1	p. 70:1-17

Exhibit	Description	Format	No. of pages in exhibit	No. of pages cited	Location of citations in McCullough testimony
WC/848	Agreement and Stipulation in FERC Docket re City of Redding, CA	Paper	30	1	p. 98:15-20
WC/863	Statement of Terry Winter before Congress	Paper	54	One sentence (no page citation)	p. 129:23-130:2
WC/901	Transcript of PacifiCorp Trader Conversations	Paper	248	2	p. 100:16-101:16
WC/903	Transcripts of PacifiCorp Trader Conversations	Paper	446	35	pp. 3, 28, 29, 36, 43-44, 46-47, 55-61, 67-68, 77-78, 93-96, 136-138, 140
WC/907	Real-Time Blotters (PC 019435 through PC 027756) Produced by PacifiCorp as Attachment 92 in Response to Wah Chang Data Requests (on DVD)	DVD	8321	0	p. 48:9-15
WC/1006	Deposition Testimony of Marlin Green, taken Nov. 16, 2005	Paper	114	4	p. 73
WC/1007	Deposition Testimony of Todd Carpenter, taken Nov. 21, 2005	Paper	215	7	pp. 14:22, 73
WC/1008	Deposition Testimony of John Rogers, taken Nov. 21, 2005	Paper	73	5	p. 73
WC/1009	Deposition Testimony of Stanley Watters, taken Nov. 29, 2005	Paper	164	12	pp. 3, 17, 24, 27, 47, 56-57, 71-72, 75, 79, 97-99, 113, 121, 135, 141-145
WC/1100	Timothy M. Belden Plea Agreement, filed Oct. 17, 2002	Paper	8	0	p. 10:6
WC/1101	John M. Forney Plea Agreement, filed Aug. 5, 2004	Paper	12	0	p. 10: 6

Exhibit	Description	Format	No. of pages in exhibit	No. of pages cited	Location of citations in McCullough testimony
WC/1102	Jeffrey S. Richter Plea Agreement, filed Feb. 4, 2003	Paper	9	0	p. 10:8
WC/1109	ISO Market Monitoring & Information Protocol	Paper	19	1	pp. 66:12-16, 130:6
WC/1111	PacifiCorp's Response to Petitioner's 7th Data Request	Paper	13	1	p. 6:8
WC/1112	PacifiCorp's Response to Petitioner's 9th Data Request	Paper	57	1	p. 6:8
WC/1113	PacifiCorp's Response to Petitioner's 10th Data Request	Paper	23	4	pp. 7:19, 8:12, 14:18
WC/1117	<i>Electric Utility Week</i> Articles	Paper	23	0	p. 45:25-46:1
WC/1125	Attachment 75 to PacifiCorp Data Response	Paper	8	0	p. 14:18
WC/1126	Attachment 76 to PacifiCorp Data Response	Paper	5	0	p. 14:21
			Total pages submitted: 17,246	Total pages cited: approx. 102	

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**APPENDIX 2**

**HEARSAY EXHIBITS SUBMITTED BY WAH CHANG**

A. Enron Hearsay Exhibits (31)

Exhibit	Description	Cited in R. McCullough Testimony at
WC/803	Enron "Inc Sheets" (on disk)	12:7, 21, 50:3-15, 51:1-10, 117:1-119:7, 138:14-25, 140:1-10, 146:1-8
WC/804	Enron Enpower record (20000522 Ricochet)	13:1-15, 138:17-24
WC/806	Tim Belden (Enron) Presentation re: Western Power Markets	17:5, 21:14
WC/808	Death Star Templates (on disk)	21, 22:14-20, 23, 52:6-25, 109:15-18
WC/811	Enron Record of Transaction	20:16
WC/814	Email from Tim Belden to Greg Piper, May 12, 2000	22:2
WC/815	Email from Tim Belden re: "Out of Market," May 23, 2000	22:28
WC/820	Yoder-Hall Memo dated December 8, 2000	127:1-12
WC/822	Tim Belden Presentation August 5, 2000	25:5
WC/824	Tim Belden emails (on disk)	25:11
WC/825	Tim Belden email, dated November 5, 2001	43:7-13
WC/826	Christian Yoder email	29:2
WC/827	Presentation by Tim Belden, dated March 25, 2001	29:3
WC/828	Bill Williams (Enron) email, dated April 17, 2001	29:13, 80:14-81:3
WC/829	Steve C. Hall email Attaching Draft Memorandum re: "Trading Strategies," November 14, 2000	30:4, 53:3-22
WC/830	Kim Ward (Enron) email dated May 4, 2001	32:1-3

Exhibit	Description	Cited in R. McCullough Testimony at
WC/832	Enron Buy-Resales	None
WC/834	Bill Williams (Enron email), dated August 30, 2001	50:19
WC/838	Stanley Cocke (Enron) email dated July 13, 2001	35:11-36:3
WC/844	PacifiCorp/Enron Buy Sells by Month	22:12, 24:7, 24:19, 25:14, 26:4-5, 26:18, 27:11, 28:8, 28:19, 29:5, 29:10, 30:4, 82:1-11, 128:4-17
WC/845	Enron email to Portland Shift re Project Red Congo	83:20-84:12
WC/846	Handwritten Notes	85
WC/852	Enron May 6 Data Request Supplemental, Nov. 15, 2002	None
WC/854	Driscoll's Final Procedures & Forney's Perpetual Loop	105:1-15, 108:1-23
WC/855	Enpower records of Death Stars with PacifiCorp	110:1-111:6
WC/857	Accomplishments of Michael Driscoll for year end 2000	113:21-114:3
WC/858	July 1, 2000 Enpower record (Death Star Deal Comments)	117:1-118:16
WC/859	July 1, 2000 Enpower and Inc Sheet	119:8-120:3
WC/860	August 19, 2000 Death Star	120: 19-25
WC/862	Enron Ricochet Counterparties	129:1-6
WC/1107	Email from JMF to Portland Shift re Project Red Congo Document number ECf000227557	None

B. Other Hearsay Exhibits (30)

Exhibit	Description	Cited in R. McCullough Testimony at
WC/807	Enron Trading Hub Correlation Matrix	17:20



Exhibit	Description	Cited in R. McCullough Testimony at
WC/809	Prepared Initial Tape Testimony of Barry E. Sullivan, Witness for the Staff of FERC	20:7, 85:17-89:23, 92:11-21, 99:9-13
WC/812	Conv. between Les at Enron and Harry at City of Redding	21
WC/813	City of Redding Conversations	29
WC/818	Docket No. EL03-159-000, Ex. No. MID-4	None
WC/819	City of Redding Conversations	None
WC/821	City of Redding Conversations	23:13, 96:4-10, 96:13-97:18, 115:1-5
WC/823	City of Redding Conversations	None
WC/836	Reliant Trader Conversations, dated June 19, 2000; June 20, 2000; June 21, 2000; and June 23, 2000	33-34
WC/837	Testimony of Ann M. Hatcher on Behalf of Silicon Valley Power in FERC Dockets	34:23-35:6
WC/839	Order on Complaint Utah Associated Municipal Power Systems Docketed June 29, 1998	66:5
WC/840	David Pierce (NRG) email, dated November 12, 2000	69:14-24, 127:13-21
WC/841	Letter from Harvey L. Reiter to Donald Gelinias (with attached Affidavit of Arlen Orchard), May 22, 2002	70:1-17
WC/842	2005 Discovery Buy Resell by Counterparty	76: 1-16
WC/847	Index of Relevant Material and email from Paul Cummings	90: 6-91:2
WC/848	Agreement and Stipulation in FERC Docket re City of Redding, CA	98: 15-20
WC/851	Chart Describing November 6, 2000 Death Star	102:7-19
WC/853	PacifiCorp Overscheduling	40:1-42:12
WC/863	Statement of Terry Winter before Congress, July 22, 2002	129:23-130:2

Exhibit	Description	Cited in R. McCullough Testimony at
WC/864	Attachment I.K.1 to PGE Affidavit Filed in FERC Docket No. PA02-2-000	131:14-132:7, 134: 1-19
WC/866	Transcript of Scheduler Telephone Conv., April 26, 2000	143:14-15
WC/867	August 23, 2000 ISO Interchange Data from Hildebrandt	146:8-16
WC/868	August 23, 2000 CAPS Supplemental Bids	147:1-9
WC/1100	Timothy M. Belden Plea Agreement, filed October 17, 2002	10:6
WC/1101	John M. Forney Plea Agreement, filed August 5, 2004	10:6
WC/1102	Jeffrey S. Richter Plea Agreement, filed February 4, 2003	10:8
WC/1105	Order on Complaint, <i>Utah Associated Municipal Power Systems v. PacifiCorp</i> , Docket No. EL 98-32-00, 83 FERC ¶ 61, 337, issued June 29, 1998	None
WC/1108	Letter from Edward Silliere of Dow Jones to "Gentlemen" RE: Guidelines for Participants, California-Oregon Border (COB) Electricity Price Index, dated February 1, 1995	None
WC/1109	ISO Market Monitoring & Information Protocol Issued by Roger Smith on October 13, 2000	66:12-16, 130:6
WC/1117	<i>Electric Utility Week</i> Articles	45:25-46:1

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**APPENDIX 3**

**UNAUTHENTICATED EXHIBITS SUBMITTED BY WAH CHANG (11)**

Exhibit	Description	Cited in R. McCullough Testimony at
WC/807	Enron Trading Hub Correlation Matrix	17:20
WC/808	Death Star Templates (on disk)	21, 22:14-20, 23, 52:6-25, 109:15-18
WC/811	Enron Record of Transaction	20:16
WC/832	Enron Buy-Resales	None
WC/842	2005 Discovery Buy Resell by Counterparty	76: 1-16
WC/844	PacifiCorp/Enron Buy Sells by Month	22:12, 24:7, 24:19, 25:14, 26:4-5, 26:18, 27:11, 28:8, 28:19, 29:5, 29:10, 30:4, 82: 1-11, 128:4-17
WC/851	Chart Describing November 6, 2000 Death Star	102:7-19
WC/853	PacifiCorp Overscheduling	40:1-42:12
WC/854	Driscoll's Final Procedures & Forney's Perpetual Loop	105:1-15, 108:1-23
WC/860	August 19, 2000 Death Star	120: 19-25
WC/862	Enron Ricochet Counterparties	129:1-6

1 **CERTIFICATE OF SERVICE**

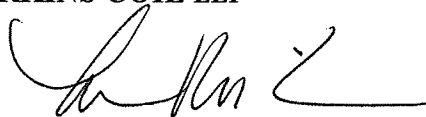
2 I certify that I have this day served the foregoing document, encaptioned PACIFICORP'S  
3 MOTION TO STRIKE PETITIONER'S DIRECT TESTIMONY AND EXHIBITS AND  
4 MEMORANDUM IN SUPPORT, by causing a copy to be sent via U.S. Mail and electronic mail  
5 to:

6 Richard H. Williams  
7 Milo Petranovich  
8 Lane Powell Spears Lubersky LLP  
9 Suite 2100  
10 601 S.W. Second Avenue  
11 Portland, OR 97204  
12 Email: williamsr@lanepowell.com  
13 petranovichm@lanepowell.com

Paul Graham  
Assistant Attorney General  
Department of Justice  
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1162 Court St. NE  
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Email: paul.graham@state.or.us

14 DATED: March 16, 2006.

15 **PERKINS COIE LLP**

16 By   
17 \_\_\_\_\_  
18 Lawrence H. Reichman, OSB No. 86083  
19 Chris Garrett, OSB No. 03100  
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