

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1002

WAH CHANG,	)	
Petitioner,	)	
	)	
v.	)	RULING
	)	
PACIFICORP,	)	
Respondent.	)	

**DISPOSITION: PACIFICORP’S MOTION TO STAY GRANTED;  
PACIFICORP’S MOTION FOR EXTENSION OF TIME GRANTED**

On May 27, 2004, the Public Utility Commission of Oregon (Commission) entered Order No. 04-305 granting Wah Chang’s motion to reopen this docket and permitting Wah Chang to conduct discovery “within the categorical parameters defined by the Circuit Court.”<sup>1</sup> On July 23, 2004, a prehearing conference was held in order to establish a procedural schedule for the reopened docket. As PacifiCorp indicated it planned to file a motion to dismiss or close the docket on jurisdictional grounds and to stay discovery, the parties did not agree on a future procedural schedule.

Over two months later, parties began filing a flurry of motions. On October 6, 2004, Wah Chang filed a motion to compel PacifiCorp’s compliance with a deposition notice.<sup>2</sup> The next day, October 7, 2004, PacifiCorp responded with a motion to stay the UM 1002 proceeding at the Commission,<sup>3</sup> as well as a motion at the Circuit Court requesting that the court terminate or limit this docket.<sup>4</sup> On October 8, 2004, Wah Chang filed a motion to compel compliance with data requests.<sup>5</sup> On the day a reply to Wah Chang’s first motion to compel was due, October 21, 2004, PacifiCorp filed a

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<sup>1</sup> On June 18, 2002, Marion County Circuit Court (Circuit Court) Judge Don Dickey issued a letter ruling granting Wah Chang’s motion to present additional evidence to the Commission for its reconsideration of Order No. 01-873. Letter Ruling from Hon. Don A. Dickey, Circuit Court Judge, to Richard Williams, Lane, Powell, Spears, Lubersky LLP, et al., *Wah Chang v. PUC*, Circuit Court Case No. 01C20598 (June 18, 2002).

<sup>2</sup> Petitioner’s Motion to Compel Compliance with Deposition Notice, UM 1002, *Wah Chang v. PacifiCorp* (October 6, 2004).

<sup>3</sup> PacifiCorp’s Motion to Stay, UM 1002, *Wah Chang v. PacifiCorp* (October 7, 2004).

<sup>4</sup> Motion to Terminate or Limit ORS 756.600 Proceedings Currently Pending Before the Public Utility Commission of Oregon, Circuit Court Case No. 01C20598, *Wah Chang v. PUC et al.* (October 7, 2004)

<sup>5</sup> Petitioner’s Motion to Compel Compliance with Data Requests, UM 1002, *Wah Chang v. PacifiCorp* (October 8, 2004).

motion for an extension of time to respond to both of Wah Chang's motions to compel.<sup>6</sup> The next day, October 22, 2004, Wah Chang filed an opposition to PacifiCorp's motion for an extension of time,<sup>7</sup> as well as an opposition to PacifiCorp's motion to stay.<sup>8</sup> On October 29, 2004, Wah Chang filed a third motion to compel, requesting compliance with another data request.<sup>9</sup> On November 2, 2004, Wah Chang provided the Commission with a courtesy copy of its opposition to PacifiCorp's motion at the Circuit Court.<sup>10</sup> Next, on November 4, 2004, PacifiCorp filed a motion for an extension of time to respond to Wah Chang's latest motion to compel.<sup>11</sup> Wah Chang responded with opposition to PacifiCorp's request for an extension of time.<sup>12</sup>

## **PacifiCorp's Motion to Stay**

### **Background**

PacifiCorp moved to stay the proceedings in this docket until after the Circuit Court ruled on PacifiCorp's motion to terminate or limit the Commission's proceedings. PacifiCorp asserts that a stay will promote administrative efficiency. PacifiCorp also argues, that due to a prior lengthy delay in these proceedings requested by Wah Chang, Wah Chang will not be prejudiced by another delay in the Commission's proceedings while the Circuit Court considers PacifiCorp's motion.

At the Circuit Court, PacifiCorp requests termination of the proceeding based on preemption of Wah Chang's claims by the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC). PacifiCorp alleges that Wah Chang's efforts to have the Commission review wholesale market rates and investigate PacifiCorp's trading activities in the wholesale market in 2000 and 2001 interfere with FERC's exclusive jurisdiction and violate the filed rate doctrine.

In the alternative, PacifiCorp argues that the Commission has erroneously interpreted the Circuit Court's direction to reopen this docket to consider additional evidence pursuant to ORS 756.600 too broadly, by permitting Wah Chang to engage in "far-ranging discovery." PacifiCorp requests that the Circuit Court limit the Commission's consideration to evidence that Wah Chang submitted to the Circuit Court and obtained leave from the Circuit Court to present to the Commission.

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<sup>6</sup> PacifiCorp's Motion for Extension of Time to Respond to Petitioner's Motions to Compel, UM 1002, *Wah Chang v. PacifiCorp* (October 21, 2004).

<sup>7</sup> Final Report on Price Manipulation in Western Markets, *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, Docket No. PA02-2-000 (March 26, 2003).

<sup>8</sup> Wah Chang's Memorandum in Opposition to PacifiCorp's Motion to Stay, UM 1002, *Wah Chang v. PacifiCorp* (October 22, 2004).

<sup>9</sup> Petitioner's Motion to Compel Compliance with Data Request (No. 72), UM 1002, *Wah Chang v. PacifiCorp* (October 29, 2004).

<sup>10</sup> Wah Chang's Memorandum in Opposition to PacifiCorp's Motion to Terminate or Limit PUC Proceeding, Circuit Court Case No. 01C20598, *Wah Chang v. PUC et al.* (November 2, 2004) (Courtesy copy provided to Commission).

<sup>11</sup> PacifiCorp's Motion for Extension of Time to Respond to Petitioner's Third Motion to Compel, UM 1002, *Wah Chang v. PacifiCorp* (November 4, 2004).

<sup>12</sup> Wah Chang's Memorandum in Opposition to PacifiCorp's Motion for Extension of Time to Respond to Petitioner's Third Motion to Compel, UM 1002, *Wah Chang v. PacifiCorp* (November 8, 2004).

## **Ruling**

PacifiCorp filed its jurisdictional motion to terminate this proceeding at the Circuit Court without first asking the Commission to consider its own jurisdiction. PacifiCorp's jurisdictional arguments would have properly been made first to the Commission. Indeed, PacifiCorp's failure to make its jurisdictional arguments to the Commission prior to raising them with the Circuit Court may implicate the doctrines of primary jurisdiction and the exhaustion of administrative remedies. Consequently, PacifiCorp's request for a stay in this proceeding is not granted on the grounds that the Circuit Court requires time to consider PacifiCorp's jurisdictional arguments.

PacifiCorp's request for a stay in this proceeding is granted, however, on the grounds that it is appropriate to delay the proceeding while the Circuit Court considers whether its directions to the Commission to take additional evidence in this docket require clarification. Pursuant to the Circuit Court's order, the Commission reopened this docket under ORS 756.600 to reconsider Order No. 01-873 in light of the new evidence outlined by the Circuit Court. Under ORS 756.568, the Commission could reevaluate Order No. 01-873 with no restrictions on the scope and nature of new evidence to be considered, as the statute authorizes the Commission to rescind, suspend, or amend any order, at any time. To date, the Commission has not invoked ORS 756.568 in this proceeding, however, and is currently proceeding under ORS 756.600.

The Circuit Court authorized Wah Chang to present evidence it characterized as:

- (i) evidence of manipulation of the Western wholesale electricity markets in the years 2000 and 2001; and (ii)
- complaints filed by PacifiCorp with the Federal Energy Regulatory Commission (FERC).

The scope of evidence included in the Circuit Court's description has been heavily disputed and addressed by the Commission in two orders, Order No. 03-153 and Order No. 04-305. In Order No. 03-153, the Commission expressed the desire to make a decision about whether to revise 01-873, "based on all the relevant information that can be produced," and anticipated taking evidence that was within the parameters of the Circuit Court's order, but which had not yet been identified. In Order No. 04-305, the Commission observed:

PacifiCorp correctly observes that ORS 756.600(1) limits the Commission to considering only the additional evidence that the Circuit Court directed the Commission to take. However, the Circuit Court characterized Wah Chang's 'proposed evidence' very broadly . . . Rather than identifying specific pieces of evidence, the Circuit Court deemed evidence falling into two categories as material and previously unavailable. Although the latter category is confined to particular proceedings at the FERC, the former category is wide ranging and limited only by a general

subject matter and a time frame. PacifiCorp has never alleged that the Circuit Court further defined or otherwise limited the evidence it gave Wah Chang to present to the Commission. Discovery within the categorical parameters defined by the Circuit Court is appropriate.

Despite the Circuit Court's broad description of evidence it ordered the Commission to take into account when reconsidering Order No. 01-873, PacifiCorp persists in arguing that ORS 756.600 limits the Commission's consideration to the "specific items of evidence that Wah Chang submitted to" the Circuit Court "and obtained leave to present to the PUC." The Commission must implement the Circuit Court's order, as it is written, at least until it is modified or clarified by the Circuit Court. Given the continuing controversy regarding the scope of evidence that the Circuit Court intended the Commission to consider in this reopened docket, it is appropriate to stay this proceeding in order to allow the Circuit Court to have an opportunity to modify or clarify its order. Wah Chang has not presented a compelling reason why it will be prejudiced by a relatively short delay. PacifiCorp's motion to stay this proceeding is, therefore, granted.

#### **Wah Chang's Motions to Compel and PacifiCorp's Motion for Extension of Time to Respond to the Motions to Compel**

Wah Chang filed three motions to compel compliance with discovery requests, including two motions to compel compliance with data requests, and one motion to compel compliance with a deposition request. PacifiCorp countered by requesting an extension of time to respond to each of Petitioner's motions to compel. PacifiCorp requested the ability to respond to each motion to comply within ten business days after a stay in this docket, should it be granted, is lifted. PacifiCorp justified the requests for extensions of time on the grounds that resources would be preserved until the Circuit Court rules on the motion before it. PacifiCorp also argues that Wah Chang will not be prejudiced by the extension of time.

As this proceeding has been stayed in order to allow the Circuit Court time to consider whether to clarify what evidence the Commission should review when reconsidering Order No. 01-873, it is appropriate to allow PacifiCorp to substantively respond to Wah Chang's motions to compel after the Circuit Court rules. Consequently, PacifiCorp's motions for extensions of time are granted post hoc. Responses to all three motions to compel by Wah Chang are due ten business days after the stay in this proceeding is lifted.

Dated at Salem, Oregon, this 16<sup>th</sup> day of November, 2004.

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**Traci A. G. Kirkpatrick**  
Administrative Law Judge

