

April 7, 2006

VIA E-MAIL (PUC.FilingCenter@state.or.us)  
ORIGINAL BY REGULAR MAIL

Public Utility Commission of Oregon  
Attention: Filing Center  
550 Capitol Street NE #215  
PO Box 2148  
Salem, OR 97308-2148

Re: *Wah Chang, Petitioner v. PacifiCorp, Respondent*  
Docket UM 1002

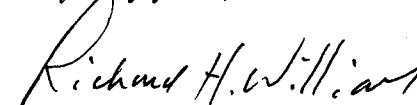
Dear Sir or Madam:

Enclosed for filing in the above-captioned proceeding are items 1 through 5. The e-mail filing does not include item 1, because it is filed under seal.

1. Wah Chang's Reply in Support of Motion to Exclude Information from Protective Order, filed under seal;
2. Wah Chang's Reply in Support of Motion to Exclude Information from Protective Order [Public Version; Redacted];
3. Affidavit of Robert McCullough in Support of Wah Chang's Reply in Support of Motion to Exclude Information from Protective Order;
4. Affidavit of Berne Martin Howard in Support of (1) Wah Chang's Reply in Support of Motion to Exclude and (2) Wah Chang's Response to PacifiCorp's Motion to Strike; and
5. Certificate of Service.

A courtesy copy of all five items are included for the Administrative Law Judge's copy file.

Very truly yours,



Richard H. Williams

Enclosures  
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Public Utility Commission of Oregon  
Re: UM 1002  
April 7, 2006  
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*bcc (by e-mail, w/encs, excluding item 1):*

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON  
UM 1002**

WAH CHANG,  
  
v.  
PACIFICORP,  
  
Petitioner,  
  
Respondent.

**WAH CHANG'S REPLY IN SUPPORT OF  
MOTION TO EXCLUDE INFORMATION  
FROM PROTECTIVE ORDER**

**PUBLIC VERSION; REDACTED**

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1 This memorandum replies to PacifiCorp's Response to Wah Chang's Motion to Exclude  
2 Information from Protective Order ("Response").

3 **I. Introduction.**

4 PacifiCorp makes no showing that the information at issue—information about transitory  
5 transactions that occurred five and six years ago under highly unusual market and PacifiCorp  
6 load-balance conditions and that are the subject of publicly available filings at FERC—is a trade  
7 secret or otherwise confidential. Its "showing," Protective Order at ¶ 15, is limited to conclusory,  
8 unsworn statements, Response at 12, ll. 11-15 and 13, ll. 2-9, and it offers no explanation how it  
9 could be harmed by public access to information about *old* transactions when highly detailed  
10 information about *current* transactions is readily available on FERC's website.

11 As the result of a FERC order issued in 2002, PacifiCorp and other wholesalers are  
12 required to file publicly available Electronic Quarterly Reports stating twenty categories of  
13 information, including price, volume, counterparty and location, about all market-based  
14 transactions, including hourly or "real-time" sales. Since all sellers are required to file,  
15 PacifiCorp's purchases as well as its sales are available. *See* Affidavit of Robert McCullough in  
16 Support of Wah Chang's Reply in Support of Motion to Exclude Information from Protective  
17 Order.

18 Rather than attempting to carry its burden of proof, PacifiCorp makes straw-man  
19 arguments, showing why the Commission should not grant a motion that Wah Chang does not  
20 make, and collateral arguments, attempting to show why the Commission should consider its  
21 blanket designations of confidentiality to be beyond challenge. None of its arguments have  
22 merit, and they will not divert the Commission's attention from the central question of openness  
23 in public process.

24 PacifiCorp's Response points to the underlying reason that it opposes Wah Chang's  
25 motion: that the evidence discovered and to be presented by Wah Chang would be "injurious to  
26 PacifiCorp's reputation." Response at 11, ll. 25-26. While PacifiCorp claims that the evidence

1 is “speculative and unsubstantiated,” *id.*, that characterization is self-serving (and wrong),<sup>1</sup> and in  
2 any event it is not a reason to prevent public access to evidence, including PacifiCorp trader  
3 conversations, of PacifiCorp’s involvement in manipulative trading.

4 Sections II, III and IV of this memorandum answer PacifiCorp’s principal arguments. As  
5 a preliminary, this Introduction corrects certain false impressions created by PacifiCorp.

6 **A. PacifiCorp misleadingly suggests that Wah Chang’s motion includes all**  
7 **materials produced by PacifiCorp in discovery.**

8 PacifiCorp makes much of the volume of materials it produced in response to Wah Chang  
9 data requests,<sup>2</sup> Response at 2 and n.2; *see also* Declaration of Susan K. Roberts in Support of  
10 PacifiCorp’s Response to Wah Chang’s Motion to Exclude Information from Protective Order.  
11 But regardless of whether the volume is truly impressive, given the complexity of the subject  
12 matter and the magnitude of Wah Chang’s claim for relief, it is simply irrelevant. Wah Chang’s  
13 motion does not seek to exclude from the Protective Order all documents produced by  
14 PacifiCorp. It seeks to exclude only confidential information to be entered into the record. For  
15 that reason, many of PacifiCorp’s assertions are misleading and many of its arguments are beside  
16 the point. *See, e.g.*, Response at 16-17.

17 PacifiCorp asserts that it produced discovery materials “based upon its belief that it could  
18 rely upon the provisions of the Protective Order to ensure that such information would not be  
19 produced to persons who were not ‘qualified persons’ and signatories to the Protective Order.”

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21 <sup>1</sup> Wah Chang urges the Commission to read Mr. McCullough’s testimony to determine for itself  
22 whether it is “speculative and unsubstantiated.”

23 <sup>2</sup> While PacifiCorp attempts to portray itself as a willing and cooperative producer of  
24 documents, it fails to mention that on three occasions *after* the court ordered this additional evidence  
25 proceeding, it attempted to prevent Wah Chang from conducting discovery and the Commission from  
26 hearing the evidence. PacifiCorp’s Motion for Summary Affirmance of Order No. 01-873, dated  
November 15, 2002; PacifiCorp’s Opposition to Petitioner’s Motion to Reopen Docket and Permit  
Discovery, dated February 13, 2004; Motion to Terminate or Limit ORS 756.600 Proceedings Currently  
Pending Before the Public Utility Commission, filed October 7, 2004, in Marion County Circuit Court.

1 Response at 2, ll. 2-4. But PacifiCorp does *not* assert that discovery material has been or will be  
2 given to anyone in violation of the Protective Order. To the contrary, PacifiCorp acknowledges  
3 that Wah Chang has complied with the Protective Order, *see* Response at 7, ll. 6-7, 16-17, and  
4 Wah Chang’s motion is expressly authorized by the Protective Order. PacifiCorp *does* make a  
5 wholly inappropriate reference to the Commission’s “addressing [of] an apparent violation of a  
6 protective order in Docket UM 1121 (Oregon Electricity Utility Company’s proposed acquisition  
7 of PGE),” Response at 6, ll. 21-26, but that apparent violation has nothing to do with the issue at  
8 hand, and the Commission will recognize PacifiCorp’s tactic for what it is.

9 PacifiCorp also asserts that it produced discovery materials “based on its belief \* \* \* that  
10 any disputes would be resolved through Paragraph 15 of the Protective Order on a case-by-case  
11 basis.” Response at 2, ll. 2-5. But that is precisely what is happening. Wah Chang seeks to  
12 exclude specified exhibits from the Protective Order. PacifiCorp had the opportunity to carry its  
13 burden with respect to each, but it made no showing as to any of them. PacifiCorp misplaces  
14 reliance upon a case discussing “wholesale” declassification of millions of documents produced  
15 in discovery, but that is not what Wah Chang’s motion seeks to do. *See below* at pages 10-11.

16 **B. PacifiCorp greatly exaggerates the volume of the exhibits at issue and its**  
17 **burden of reviewing them for confidentiality.**

18 PacifiCorp seeks to create the impression that the Wah Chang exhibits at issue are so  
19 voluminous—28 in number, “including the equivalent of over 110,000 pages of documents, plus  
20 additional electronic files,” Response at 2, l. 11—as to make it “unreasonable for PacifiCorp to  
21 be required to review them in their entirety to identify all confidential information.” Response at  
22 4, ll. 1-3. This impression is false.

23 The number of exhibits at issue, 28, is of course easily manageable. Indeed, the number  
24 is modest given the subject matter and the \$25,000,000 in unjust and unreasonable overcharges  
25 suffered by Wah Chang.

26

1 As to the “equivalent of 110,000 pages of documents, plus additional electronic files,”  
2 Response at 2, l. 11, PacifiCorp hyperinflates its review burden. A few examples illustrate the  
3 point:

4 • One exhibit, according to PacifiCorp, accounts for “98,828 pages of Excel spreadsheets.”  
5 Response at 22, ll. 23-24. This assertion requires considerable clarification that  
6 dramatically deflates it. The exhibit, WC/906, is a compact disk that PacifiCorp  
7 produced in response to Wah Chang’s request for ISO settlement data for transactions in  
8 which PacifiCorp acted as scheduling coordinator during 2000-2001. *See* WC/1112 at  
9 29. The disk contains 350 Excel files, each containing one data worksheet and one table  
10 summarizing the data. Each spreadsheet and table is in a standard format and can be  
11 displayed and read on a computer screen without opening and closing windows.  
12 PacifiCorp has not explained why it could not have made a confidentiality showing as to  
13 ISO settlement data as a category, or why it would have needed to view each worksheet  
14 and table individually. Further, it has offered no reason why anyone would need to print  
15 out the data files. They are intended to be viewed and worked with on a computer. The  
16 “equivalent of 98,828 pages” is simply a meaningless number. *See* Affidavit of Berne  
17 Martin Howard in Support of (1) Wah Chang’s Reply in Support of Motion to Exclude  
18 and (2) Wah Chang’s Response to PacifiCorp’s Motion to Strike.

19 • Another exhibit, according to PacifiCorp, contains 8,321 pages on a DVD. This exhibit,  
20 WC/907, consists of PacifiCorp “real-time blotters,” or trading logs, for transactions  
21 during 2000-2001. Response at 13, ll. 1-2. A significant part of this exhibit already is  
22 publicly available through FERC: PacifiCorp submitted blotters from the period July-  
23 November 2000 as Exhibit 4 to the Watters May 22 Affidavit. The blotters are in a  
24 uniform format, and, again, PacifiCorp has not explained why it would have needed to  
25 review each one that it had not already reviewed before turning them over to FERC.

26



- 1       • According to PacifiCorp, the PacifiCorp depositions submitted as hearing exhibits total  
2       1,300 pages, a number that apparently includes the deposition exhibits, many of which  
3       are familiar documents in this proceeding. This is not an unreasonable number of  
4       deposition pages to expect PacifiCorp to have reviewed. Two PacifiCorp attorneys,  
5       including one PacifiCorp in-house attorney, attended each deposition, and thus were  
6       familiar with the deposition testimony and could have reviewed it without undue burden.
- 7       • The “additional 381 electronic files,” Response at 12, l. 9, are audio files of PacifiCorp  
8       trader conversations. Of these, 249 are audio files selected by PacifiCorp itself for  
9       submission to FERC in 2002, WC/902, and PacifiCorp does not contest that they are  
10      publicly available from FERC. Further, Wah Chang filed and served court reporter  
11      transcripts of them as part of its direct case, WC/901, and the transcripts have been in  
12      PacifiCorp’s hands since December 15, 2005. The other 132 audio files are PacifiCorp  
13      trader conversations selected through the Wah Chang “listening project.” WC/904. They  
14      also were transcribed by court reporters, and PacifiCorp easily could have reviewed the  
15      transcripts or listened to the audio files, or both.

16           In short, PacifiCorp vastly overstates the burden of reviewing the exhibits, and its failure  
17   to make any showing to support its claim of confidentiality cannot be excused by its claim of  
18   burden. Wah Chang filed its exhibits on December 15, 2005, and sent PacifiCorp a draft of its  
19   Motion to Exclude on January 13, 2006, giving PacifiCorp ample time to review the exhibits for  
20   confidentiality before it filed its Response on March 16, 2006. Given the resources the parties  
21   have devoted to this proceeding, over five and a half years, PacifiCorp’s claim of undue burden  
22   is a hollow one.

1           **C. Wah Chang does not seek to exclude from the Protective Order materials**  
2           **that are irrelevant to its petition.**

3           PacifiCorp's opposition is predicated in part on the mistaken notion that Wah Chang  
4 seeks to "declassify" PacifiCorp documents that are irrelevant to its claim or otherwise  
5 inadmissible. That is not the case. Wah Chang seeks an open hearing and public access to its  
6 testimony and exhibits in support of its petition, not a "wholesale" distribution of documents  
7 produced in discovery.

8           PacifiCorp has moved to strike virtually all of Wah Chang's testimony and exhibits,  
9 including Mr. McCullough's testimony and many of the exhibits at issue in Wah Chang's  
10 Motion to Exclude, and PacifiCorp's motion is pending. *See* PacifiCorp's Motion to Strike  
11 Petitioner's Direct Testimony and Exhibits. PacifiCorp's objections to Mr. McCullough's  
12 testimony and the exhibits at issue lack merit, *see* Wah Chang's Response to PacifiCorp's  
13 Motion to Strike Petitioner's Direct Testimony and Exhibits, and they are admissible into  
14 evidence.

15           **II. PacifiCorp could not have "reasonabl[y] expected" that nonconfidential information**  
16           **was entitled to protection or that Wah Chang would not contest its blanket**  
17           **confidentiality designations.**

18           PacifiCorp asserts that it expeditiously gave Wah Chang access to voluminous  
19 "proprietary and commercial information without regard to relevancy or responsiveness, in  
20 reliance on the Protective Order," Response at 4, l. 9, and that Wah Chang's Motion to Exclude  
21 "violates PacifiCorp's reasonable expectations in being forthcoming in discovery." *Id.* at 6,  
22 l. 18. These assertions do not bear examination.

22           **A. Wah Chang did not agree not to contest PacifiCorp's confidentiality**  
23           **designations.**

24           PacifiCorp was entitled to expect that Wah Chang would not disclose, without prior  
25 Commission order, information that PacifiCorp had designated as confidential. Its expectations  
26

1 in that respect have been met. PacifiCorp does not allege that Wah Chang has violated the  
2 Protective Order, and it has not.

3 PacifiCorp was *not* entitled to expect that Wah Chang would not exercise its right under  
4 the Protective Order to contest PacifiCorp's confidentiality designations. The Protective Order  
5 expressly permits such a contest, and Wah Chang did nothing to lead PacifiCorp to believe that  
6 Wah Chang would not exercise its right.

7 Contrary to PacifiCorp's suggestion, Response at 1, ll. 17-22, neither PacifiCorp nor  
8 Wah Chang reasonably could have understood their stipulation to entry of the Protective Order in  
9 February 2001 as a commitment not to contest the other's confidentiality designations. The right  
10 to contest was part of the stipulated Protective Order.

11 Nor, contrary to PacifiCorp's suggestion, did Wah Chang waive its right to contest the  
12 asserted confidentiality of the trader tapes. *See* Response at 6. The parties entered into an  
13 Agreement prior to PacifiCorp's production of the tapes (the "Tapes Agreement"), but it did not,  
14 as PacifiCorp claims, prohibit Wah Chang from contesting PacifiCorp's designation of the tapes  
15 as confidential. The Tapes Agreement supplemented the Protective Order by providing certain  
16 additional protections relating principally to nonwaiver of the attorney-client privilege, but it did  
17 not purport to supersede or replace the Protective Order. To the contrary, it explicitly made the  
18 tapes subject to the Protective Order: " \* \* \* [the tapes] will be treated in every other respect as  
19 CONFIDENTIAL pursuant to the protective order in place in this matter." Response, Ex. 1 at 2.  
20 One "respect" of "treat[ment] [of information] as CONFIDENTIAL pursuant to the protective  
21 order" is the right to ask the Commission to decide whether the information is in fact  
22 confidential.

23 Waiver is the intentional relinquishment of a known right, and it "must be manifested in  
24 an unequivocal manner." *Hohman v. Bartel*, 128 Or. App. 384 at 387, 876 P.2d 347 (1994). The  
25 Tapes Agreement did not "manifest[ ] in an unequivocal manner" a waiver by Wah Chang of its  
26 right under the Protective Order to contest the asserted confidentiality of the tapes. *See Interstate*

1 *Fire v. Underwriters at Lloyd's, London*, 139 F.3d 1234, 1237 (9th Cir. 1998) (applying Oregon  
2 law; insurance company's letter and payment of defense costs "[did] not show an unequivocal  
3 waiver of the earlier reservation [of rights]"). To the contrary, the Tapes Agreement  
4 supplemented the Protective Order, including its provision for contest, and did not supersede it.

5 **B. PacifiCorp can demonstrate no prejudice from its alleged reliance on its**  
6 **mistaken belief that its designations were beyond challenge.**

7 PacifiCorp asserts that, in order to facilitate timely discovery, it "did not exercise its right  
8 to review and specifically object to producing documents *before* producing them," Response at  
9 5, ll. 3-4, and that it would have done so had it known that "Wah Chang would seek to disclose  
10 [the information] publicly." *Id.* at 4, l. 18. The mistaken premise of these assertions is that  
11 Wah Chang seeks to exclude all materials produced in discovery. As discussed, that is incorrect.  
12 But even with respect to the documents Wah Chang filed as exhibits, PacifiCorp's assertions are  
13 unsupported by any specific illustration of prejudice, and there is none.

14 PacifiCorp identifies relevance and production burden as potential discovery objections it  
15 might have asserted but did not in reliance on the Protective Order. Response at 4, ll. 14-16. But  
16 there is no nexus between the relevance of a document or the burden of producing it, on the one  
17 hand, and its confidentiality, on the other. Stated otherwise, the Protective Order facilitates  
18 discovery by protecting against unauthorized disclosure of information the producing party  
19 designates as confidential, not by preserving the producing party's claims of irrelevance and  
20 production burden. The Protective Order has nothing to say about relevance or production  
21 burden, and it does not seek to mitigate or avoid discovery objections on those or any grounds  
22 other than confidentiality. PacifiCorp's claim that it forsook reasonable discovery objections in  
23 the interest of timeliness is open to question, but if it did, it was not "in reliance on the Protective  
24 Order." Response at 4, l. 16. Further, PacifiCorp remains free to object to introduction of its  
25 documents into evidence as irrelevant or otherwise inadmissible, and in fact it has done so.

26

1 PacifiCorp also claims that, in reliance on the Tapes Agreement, it produced lengthy  
2 trader conversation tapes—“9,000 person hours”—without reviewing them for attorney-client  
3 privilege. Response at 5, l. 24. That claim is undoubtedly correct. The Tapes Agreement  
4 preserved PacifiCorp’s right to assert the attorney-client or other privilege for conversations on  
5 the tapes. This provision facilitated the tapes’ production because it addressed PacifiCorp’s  
6 concern that some trader conversations might be privileged and that it could not know without  
7 listening to them. In the absence of the Tapes Agreement, PacifiCorp’s disclosure of privileged  
8 conversations by delivering the tapes to Wah Chang would have waived the privilege.

9 But Wah Chang’s motion does *not* jeopardize PacifiCorp’s ability to claim the privilege.  
10 *First*, Wah Chang did not file as exhibits, and does not seek to “declassify,” all “9,000 person  
11 hours” of taped conversations, and PacifiCorp has no need to review them all for privilege.

12 *Second*, the conversations that Wah Chang did file as part of its direct case, and now  
13 includes in its Motion to Exclude, are limited in number, and PacifiCorp has had ample  
14 opportunity to review them for privilege. The Tapes Agreement required Wah Chang to identify  
15 to PacifiCorp, 10 business days before filing, the conversations that Wah Chang intended to file.  
16 The purpose of this provision was to allow PacifiCorp to assert the privilege before the filing.  
17 *See* Response, Ex. 1 at 2. PacifiCorp does not claim that Wah Chang failed to comply, and in  
18 fact it did comply. Further, PacifiCorp has had ample opportunity after the filing to review the  
19 conversations for privilege. The conversations were filed and served, as audio files and as  
20 transcripts, on December 15, 2005, and Wah Chang notified PacifiCorp on January 13, 2006 that  
21 it intended to file its Motion to Exclude, including the trader conversations.<sup>3</sup>

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24 <sup>3</sup> PacifiCorp suggests that reviewing the filed conversations is a great burden, asserting that the  
25 transcripts “includ[e] over 850 pages of information.” Response at 6, l. 16. This assertion is also  
26 incorrect. The page total for WC/901, the transcripts of the FERC-submitted conversations, is 248, and  
the page total for WC/903, the transcripts of the “listening project” tapes, is 446, of which 50 are cover  
sheets and court reporter certifications. Thus, the conversation transcripts total 644 pages, not 850.

1 Thus, the Motion to Exclude does not violate the arrangements preserving PacifiCorp's  
2 right to assert the attorney-client or other privilege for trader conversations. See Response at 6,  
3 1. 18.

4 **C. The cases cited by PacifiCorp support Wah Chang's motion, not**  
5 **PacifiCorp's opposition.**

6 As discussed, Wah Chang does not seek to "chang[e] the ground rules," Response at 5,  
7 quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003), and for  
8 that reason PacifiCorp's reliance on *Foltz* does not aid it. To the contrary, *Foltz* supports Wah  
9 Chang's motion. In that case, intervenors, who were litigating against State Farm in another  
10 case, moved to unseal summary judgment materials that the *Foltz* plaintiffs had obtained from  
11 State Farm through discovery under a blanket protective order. State Farm opposed the motion,  
12 contending that the materials were entitled to protection because they were confidential financial  
13 information and trade secrets. The court disagreed, finding that the minimal amount of truly  
14 confidential information could easily be redacted. *Foltz*, 331 F.3d at 1137.

15 State Farm then contended that the court nonetheless should not unseal the documents  
16 because it had relied on the protective order in consenting to discovery requests. The court  
17 thoroughly rejected this argument: "Because State Farm obtained the blanket protective order  
18 without a particularized showing of good cause with respect to any particular document, it could  
19 not reasonably rely on the order to hold these records forever under seal. [citations omitted]  
20 Thus, State Farm's reliance interest fails to overcome the presumption in favor of access, and  
21 State Farm offers no other." *Foltz*, 331 F.3d at 1138.

22 PacifiCorp had even less reason than did State Farm to rely on the Protective Order to  
23 protect information that is not in fact confidential. The Protective Order, unlike the blanket order  
24 in *Foltz*, expressly provides a mechanism for contesting confidentiality designations.

25 Nor is PacifiCorp's argument aided by *Zenith Radio Corp. v. Matsushita Elect. Indus.*  
26 *Co.*, 529 F. Supp. 866 (E.D. Pa. 1981). See Response at 5, 9 and 16. In that case, an antitrust

1 case of lengthy duration, plaintiffs sought to remove from the protective order, among other  
2 things, “all documents produced in discovery which, under the aegis of PTO 35, have been  
3 stamped ‘confidential,’” *id.* at 873, comprising “at least several million document pages.” *Id.* at  
4 874, n.6. The court denied the request because “[w]holesale declassification of millions of  
5 documents, years after they have been produced, would require a tremendous concentration of  
6 judicial and litigants’ resources.” *Id.* at 893. In light of the case management problems posed by  
7 the request, the court concluded that plaintiffs “must first attempt to justify the investment of  
8 judicial and private resources demanded by such an exercise,” *id.*, at 894, and that they had not  
9 done so.

10 Wah Chang’s motion bears no resemblance to the *Zenith* holding that PacifiCorp relies  
11 upon. *First*, the motion is limited to documents to be introduced into evidence, and does not  
12 include all documents copied or made available during discovery. *Second*, the number of  
13 documents and pages at issue is limited, and does not approach the volume of documents at issue  
14 in the aspect of *Zenith* that PacifiCorp relies upon. *Finally*, Wah Chang’s motion does not create  
15 case management problems, and a decision about the confidentiality of the exhibits at issue does  
16 not require a “tremendous concentration of [Commission] and litigants’ resources.” *Zenith*, 529  
17 F. Supp. at 893.

18 Wah Chang’s motion is supported by other *Zenith* holdings that PacifiCorp does not cite.  
19 The court held that “trial exhibits are part of the judicial record to which [public] access rights  
20 attach,” 529 F. Supp. at 897, and that “all materials that are the subject of an evidentiary ruling  
21 by the court, whether or not found admissible, are part of the record for purposes of the public’s  
22 right to inspect and copy.” *Id.* at 899. Thus, *Zenith*, like *Foltz*, supports Wah Chang’s motion.

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1 **III. PacifiCorp carries the burden of proving confidentiality; Wah Chang carries no**  
2 **burden of showing a “need” for open process.**

3 The Protective Order permits a party “who disagrees with the designation of information  
4 as confidential” and who “desir[es] to use the information” to move to exclude the information  
5 from the Protective Order. Paragraph 15. Wah Chang disagrees with PacifiCorp’s designations  
6 and desires to use the information as part of its case in an open process. That is all it needs to  
7 show.

8 PacifiCorp asserts that Wah Chang must make a showing “that declassification is  
9 necessary to present its case,” Response at 7, l. 9, and that it has not done so.<sup>4</sup> This assertion is  
10 not supported by the Protective Order or by reason. Indeed, it stands the Protective Order on its  
11 head by imposing a burden of proof on the party contesting the other party’s unilateral secrecy  
12 designation. If the moving party had to prove that it could present its case only by obtaining an  
13 exclusion order, confidentiality designations would be virtually immune from challenge.  
14 Procedures, such as filing under seal and closing the hearing to the public, can always be  
15 employed to protect allegedly confidential information, making an exclusion order  
16 “unnecessary.” Consequently, a party could liberally apply the designation to nonconfidential  
17 information that is, for example, “injurious to [its] reputation.” Response at 11, ll. 25-26. This  
18 would tend to make secrecy the rule, rather than the exception, an outcome at odds with the  
19 strong bias in favor of openness.

20 In a transparent attempt to “poison the well,” PacifiCorp speculates that Wah Chang’s  
21 real objective is “to try its case in the media,” Response at 7, l. 21, or to enable Mr. McCullough  
22

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23 <sup>4</sup> PacifiCorp states that Wah Chang “is not being disadvantaged by the documents at issue being  
24 designated as confidential,” Response at 8, ll. 13-14, because “Wah Chang has already incurred the  
25 burden of meeting its obligations under the Protective Order” by filing its direct case under seal,  
26 Response at 8, ll. 14-15. That, of course, is incorrect. Each time Wah Chang files a pleading, including  
this one and its rebuttal case, Wah Chang must prepare and file (and the Commission must process) a  
redacted version, if necessary, to comply with the Protective Order. Thus, the burden is ongoing.



1 to use PacifiCorp information to aid the City of Portland’s investigation of Portland General  
2 Electric. Response at 7-8. PacifiCorp’s conjecture is baseless. Wah Chang plainly *does* want  
3 the public to have access to its testimony and exhibits, and it wants the hearing to be open to the  
4 public. Wah Chang believes that PacifiCorp has much to answer and that it ought to do so in an  
5 open, public forum, particularly because it is a regulated, state-sanctioned monopoly. But that is  
6 not the same as wanting “to try its case in the media.” If Wah Chang had wanted to do so, it  
7 would have started long ago, but in fact it has not. Wah Chang has a corporate policy limiting  
8 comment to the press about ongoing litigation, and that policy applies to this proceeding.

9 Nor is PacifiCorp’s speculation about Mr. McCullough credible. PacifiCorp suggests no  
10 reason why Wah Chang would want to incur the expense of bringing its motion to exclude in  
11 order to aid Mr. McCullough’s representation of another client, and there is none.

12 Wah Chang has shown that it desires to use the information at the hearing, and it need not  
13 make any other showing in order to put PacifiCorp to its proof. PacifiCorp’s irresponsible  
14 speculation about Wah Chang’s motive speaks volumes about the weakness of its arguments on  
15 the merits of the motion.

16 **IV. PacifiCorp has failed to carry its burden of proving that the information is entitled**  
17 **to protection.**

18 As discussed, PacifiCorp makes no serious attempt to show that the information is  
19 confidential. Indeed, PacifiCorp makes no confidentiality claim whatsoever with respect to  
20 many exhibits, and with respect to others it relies solely on conclusory statements in its opposing  
21 memorandum. *Cf. Zenith*, 529 F. Supp. at 892 (defendants submitted affidavits describing harm  
22 that would result from disclosing discrete categories of information). Such statements do not  
23 constitute a “showing,” Protective Order at ¶ 15, that the information is confidential, much less  
24 that PacifiCorp will suffer a “clearly detrimental and serious injury” if the public has access to it.  
25 *See CUB v. PUC*, 128 Or. App. 650, 658, 877 P.2d 116 (1994).

26

1 Even PacifiCorp’s unsubstantiated claims do not bear scrutiny. As discussed, a wealth of  
2 information about PacifiCorp’s current short-term transactions is publicly available on the FERC  
3 website. See Affidavit of Robert McCullough in Support of Wah Chang’s Reply in Support of  
4 Motion to Exclude.

5 Two categories of documents deserve particular comment:

6 Trader Conversations. PacifiCorp asserts that these conversations, like its 2000-2001  
7 short-term transaction records, reveal “the extent to which PacifiCorp relies upon buying and  
8 selling of electric power in real-time to balance its system.” Response at 12, ll. 11-13. This is  
9 false for a number of reasons, the most telling of which is that

10  
11  
12 [redacted]

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17 Even if [redacted], they occurred five  
18 and six years ago during a period when PacifiCorp was short due to low water and the Hunter  
19 outage. See *Industrial Customers of Northwest Utilities v. PUC*, 196 Or. App. 46 at 51, 100 P.3d  
20 1072 (2004) (“Instead, PacifiCorp’s reliance on the short-term market grew substantially in 2000  
21 and lessened only slightly in 2001”). PacifiCorp makes no attempt to explain how five-year-old  
22 transactions during unusual conditions can “reveal PacifiCorp’s [current] real-time balancing  
23 strategy.” Response at 12.

24 Finally, PacifiCorp does not dispute that the conversations comprising WC/901 and  
25 WC/902 are publicly available at FERC. Certainly no claim of confidentiality can be made with  
26 respect to those conversations, and if, as PacifiCorp claims, trader conversations “reveal [its]

1 real-time balancing strategy,” Response at 12, there is no reason to maintain the confidentiality  
2 of the other submitted conversations, comprising WC/903 and WC/904, in order to prevent  
3 “reveal[ing]” that strategy.

4 Short-Term Transaction Records. PacifiCorp again asserts that these documents “reveal  
5 [its] real-time balancing strategy,” again without providing any evidence or concrete explanation  
6 of how PacifiCorp would be harmed by excluding the information from the Protective Order. As  
7 a poor substitute, PacifiCorp parrots the *Zenith* court’s findings about different information in a  
8 different industry on a different record to the effect that a competitor might “extrapolate” old  
9 information to current conditions. Response at 13. This bare, speculative assertion has no  
10 probative force, particularly given the unusual events that affected PacifiCorp’s load-resource  
11 balance in 2000-2001.

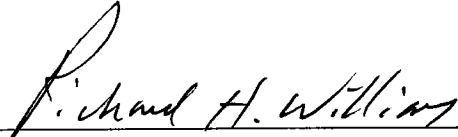
12 Further, if an “able and shrewd competitor,” Response at 13, were determined to  
13 extrapolate old data to divine PacifiCorp’s current balancing strategy, it could do so regardless of  
14 the Commission’s ruling on Wah Chang’s motion. As discussed, detailed information about  
15 PacifiCorp’s 2000-2001 short term transactions is publicly available at FERC.

16 **V. Conclusion.**

17 The Commission should grant Wah Chang’s Motion to Exclude.

18 DATED this 7th day of April, 2006.

19 LANE POWELL PC

20  
21 By   
22 Richard H. Williams, OSB No. 72284  
23 Milo Petranovich, OSB No. 81337

24 Attorneys for Petitioner Wah Chang

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4 **BEFORE THE PUBLIC UTILITY COMMISSION**  
5 **OF THE STATE OF OREGON**  
6 **UM 1002**

6 Wah Chang, )  
7 v. ) Petitioner, )  
8 PacifiCorp, )  
9 Respondent. )

**AFFIDAVIT OF ROBERT  
McCULLOUGH IN SUPPORT  
OF WAH CHANG’S REPLY IN  
SUPPORT OF MOTION TO  
EXCLUDE INFORMATION  
FROM PROTECTIVE ORDER**

10 STATE OF OREGON )  
11 County of Multnomah ) *ss.*

12 I, ROBERT MCCULLOUGH, being first duly sworn, depose and say:

13 1. I make this affidavit in support of Wah Chang’s Motion to Exclude Information  
14 from Protective Order. I make this affidavit based on my personal knowledge.

15 2. I am the principal of McCullough Research LLC, an energy consulting firm.  
16 I have been retained on behalf of Wah Chang as an expert witness in this proceeding. My  
17 prefiled and in-person testimony on behalf of Wah Chang and my curriculum vitae were  
18 admitted into evidence during the 2001 hearing.

19 3. My Direct Testimony on behalf of Wah Chang in the current phase of this docket  
20 has been prefiled as Exhibit WC/800 and my current curriculum vitae has been prefiled as  
21 Exhibit WC/801.

22 4. This affidavit presents information concerning certain statements, quoted below,  
23 apparently presented as statements of fact in PacifiCorp’s Response to Wah Chang’s Motion to  
24 Exclude Information from Protective Order (“PacifiCorp’s Response”). Specifically, this  
25 affidavit discusses the public availability of transaction data filed by PacifiCorp with the Federal  
26 Energy Regulatory Commission (“FERC”).

1           5.       At page 13, lines 2-9, PacifiCorp's Response states as follows with reference to  
2 Exhibits WC/905, WC/906 and WC/907, which contain information about PacifiCorp  
3 transactions during 2000-2001:

4                   These documents reveal PacifiCorp's real-time balancing strategy,  
5 including the names its [*sic*] counterparties, volume and pricing  
6 information, and the extent to which PacifiCorp relies upon buying  
7 and selling in real-time to balance its system. Even though this  
8 data is several years old, competitors could extrapolate information  
9 and patterns that could be used to deduce PacifiCorp's confidential  
power procurement activities. PacifiCorp's ability to supply power  
at the least cost for the benefit of its customers could be  
compromised by the public release of this information. For these  
reasons, this information is confidential commercial information  
and should not be made public.

10       **Public Availability of Current Transaction Data.**

11           6.       FERC requires PacifiCorp and other FERC-regulated electricity sellers to file a  
12 quarterly report, called an Electronic Quarterly Report ("EQR"), within 30 days after the end of  
13 each calendar quarter. The EQRs report data for all sales made by the reporting company during  
14 the quarter, including day-ahead, same-day and hourly or "real time" sales.

15           7.       FERC imposed the requirement to file EQRs by issuing Order No. 2001, dated  
16 April 15, 2002, in Docket No. RM01-8-000, reported at 99 FERC ¶ 61,107 (the "Filing  
17 Requirements Order"). The Filing Requirements Order updated earlier FERC requirements for  
18 filing current transaction data.

19           8.       The EQRs must report 20 categories of information about each sale, including the  
20 seller, buyer, date, time, price, quantity and location of the transaction. Attached to this  
21 Affidavit as Exhibit 1 is a copy of Attachment C to the Filing Requirements Order listing the  
22 transaction information to be reported in the EQR. (As stated in Attachment C, price may be  
23 reported as a period's weighted average. For example, if a company engaged in two hour-ahead  
24 transactions for the same hour, it could report the weighted average.)

25           9.       The EQRs are publicly available. In the Filing Requirements Order, FERC  
26 rejected disclosure concerns expressed by companies commenting on the proposed requirements:

1 92. The controversy over disclosure is limited to those that  
2 concern rates and does not concern the new elements. But FPA  
3 section 205(c) requires public utilities to disclose their rates and  
4 contracts for all transmission and sales subject to the jurisdiction of  
5 the Commission. As a result, these rate elements as well as the data  
6 public utilities currently file are not protected from disclosure  
7 under Exemption 4 of the FOIA or by the Trade Secrets Act.  
8 Although the Commission has discretion to determine the time and  
9 form for disclosure, the underlying decision to disclose rate and  
10 contract information was made by Congress.

11 93. Because nearly all of the information at issue is already  
12 publicly available, we give little credence to predictions of  
13 competitive harm, based on conjecture, and which are not  
14 supported by evidence of actual harm from the Commission's  
15 current reporting requirements. Moreover, the allegations of harm  
16 are exactly the kind of "conclusory and generalized allegations of  
17 substantial competitive harm" that do not suffice to show  
18 substantial harm to a company's competitive position or to  
19 competition in general.<sup>1</sup>

20 10. The Filing Requirements Order and the data submitted by reporting companies  
21 can be found at FERC's website at <http://www.ferc.gov/docs-filing/eqr.asp#skipnavsub>. Data  
22 for a specific company, including PacifiCorp, can be found at <http://www.ferc.gov/docs-filing/eqr/data/spreadsheet.asp> by entering the requested quarter and company name.

23 11. The EQR transaction data can be searched by counterparty. For example, the data  
24 can be searched for transactions in which PacifiCorp was the reporting seller's counterparty.  
25 Consequently, an interested person could locate all transactions in which PacifiCorp was a  
26 purchaser as well as seller.

**Public Availability of 2000-2001 Transaction Data.**

12. Soon after my presentation to the U.S. Senate Energy and Natural Resources  
Committee on January 29, 2002, FERC staff contacted me for my advice on a data request to  
WECC market participants concerning transactions in 2000 and 2001. FERC issued the data  
request on March 5, 2002 as part of its PA02-2 investigation into western market manipulation.

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<sup>1</sup> Filing Requirements Order, at 38.

1 A copy of the data request is Attachment 2 to Wah Chang’s Memorandum in Support of Wah  
2 Chang’s Motion to Exclude Information from Protective Order. The data request was designed  
3 to provide FERC with additional detail, including location and timing, about transactions that  
4 already had been reported on Power Marketer Quarterly Reports, the predecessor of EQRs.

5 13. FERC received the information from its data request and assembled three  
6 databases covering short term, monthly, and long term transactions. These databases are public  
7 and can be found at [http://ferc.aspensys.com/FercData/EnronDataExtracts/DO4\\_25\\_WSCC](http://ferc.aspensys.com/FercData/EnronDataExtracts/DO4_25_WSCC_Sellers_Data_Monthly)  
8 [Sellers Data Monthly](http://ferc.aspensys.com/FercData/EnronDataExtracts/DO4_25_WSCC_Sellers_Data_Monthly).

9 14. PacifiCorp’s Response is correct when it states that FERC’s data request  
10 specifically requested sale information from WECC market participants. PacifiCorp’s Response  
11 is incorrect to the extent it implies that the database does not contain information on a market  
12 participant’s purchases. Since each transaction has both a seller and a buyer, other market  
13 participants’ sales to PacifiCorp necessarily report PacifiCorp’s purchases. In order to find  
14 PacifiCorp’s purchases from another counterparty, a person need only look up the sales by that  
15 counterparty to PacifiCorp.

16 **Disclosure of “Real-Time Balancing Strategy” through Disclosure of Transaction Data:**

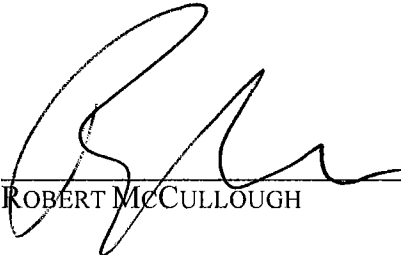
17 15. As noted above, PacifiCorp’s Response states that “[t]hese documents [*i.e.*, Wah  
18 Chang’s exhibits] reveal PacifiCorp’s real-time balancing strategy, including the names its [*sic*]  
19 counterparties, volume and pricing information, and the extent to which PacifiCorp relies upon  
20 buying and selling in real-time to balance its system.” PacifiCorp’s Response goes on to state  
21 that this information is “confidential commercial information and should not be made public.”  
22 This statement is incorrect since the names of counterparties, prices, and quantities are already  
23 public. By reason of the EQRs, such information about PacifiCorp’s recent transactions is  
24 publicly available. By reason of PacifiCorp’s responses to FERC data requests, such information  
25 about PacifiCorp’s 2000-2001 transaction is publicly available.

26

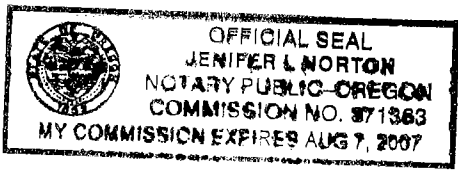
1           16.    PacifiCorp's Response also states that the 2000-2001 transaction data reveals  
2 PacifiCorp's "real-time balancing strategy." PacifiCorp's Response does not explain what a  
3 "real-time balancing strategy" is, and it is not a term of art in the electricity industry. A computer  
4 search of the ten million documents on McCullough Research's computer did not find any  
5 documents containing the phrase. It did show up once in a Google search, referring to a web  
6 page in England (<http://www.nationalgrid.com/uk/electricity>), but the search engine on that site  
7 did not find the phrase on the site.

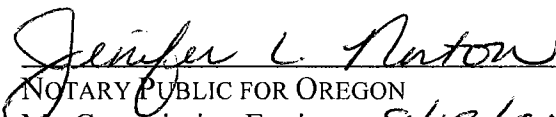
8           17.    As stated above, when FERC rejected commenters' requests to make EQR data  
9 confidential, it stated: "Moreover, the allegations of harm are exactly the kind of 'conclusory  
10 and generalized allegations of substantial competitive harm' that do not suffice to show  
11 substantial harm to a company's competitive position or to competition in general." See  
12 paragraph 9 above.

13           DATED: April 7, 2006.

14  
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16 \_\_\_\_\_  
17 ROBERT McCULLOUGH

18           SIGNED AND SWORN to before me this 7<sup>th</sup> day of April, 2006.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 8/07/2007



99 FERC ¶ 61, 107  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 2 and 35

(Docket No. RM01-8-000; Order No. 2001)

Revised Public Utility Filing Requirements

(Issued April 25, 2002)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its filing requirements for public utilities under the Federal Power Act (FPA) to require public utilities to electronically file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Under this rule, public utilities may file standard forms of service agreements for Commission approval for all cost-based transmission and power sales services they offer under 18 CFR Part 35 and will file agreements for such services provided under this Part that do not conform to an applicable standard form of service agreement. Executed market-based power sales agreements need not be filed.

CONTRACT INFORMATION	
Information	Definition
product type name	The "Product type name" includes: T = Electric Transmission, MB = Market Based Power, CB = Cost Based Power, S = Services - Other, or {registered}
term name	Name for term. LT = Long-Term (>= one year), ST = Short-Term (< one year).
increment name	Name of increment. The increment selected would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
product name	A product is something being bought and sold, a type of service or standard agreement. Examples: Point-To-Point Network Capacity Installed Capacity SC - Scheduled system control and dispatch RV - Reactive supply and vol. control RF - Regulation and freq. response EI - Energy imbalance SP - Spinning reserve SU - Supplemental reserve DT - Dynamic Transfer TL - Real Power Transmission Loss BS - System Black Start Capability Must Run Unit Market Based Power Sale Cost Based Power Sale Economy Power Sale Emergency Power Sale General Purpose Power Sale Unit Power Sales Border Sales Specialized affiliate transactions Interconnection Agreements System Impact and/or Facilities Study Charge(s) Direct Assignment Facilities Charge {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
quantity	Product quantity for the contract item identified.
rate	Rate charged for this product per unit. Used when a single rate is designated

CONTRACT INFORMATION	
Information	Definition
	for a product.
rate minimum	Minimum rate to be charged per the contract, if a range is specified.
rate maximum	Maximum rate to be charged per the contract, if a range is specified.
rate description	Text description of rate. May reference FERC tariff, or, if a discounted or negotiated rate, include algorithm.
units	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of receipt control area	Point of receipt control area. Examples include "AEP", "JACK", "FE". (These values will match what is provided for in the OASIS.)
point of delivery control area	Point of delivery control area. Examples include "AEP", "JACK", and "FE". (These values will match what is provided for in the OASIS.)
point of receipt specific location	The specific location for the point of receipt (POR) as spelled out in the contract. Examples include a named sub-station or generation plant.
point of delivery specific location	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include a named sub-station or generation plant.
begin date	Beginning date of for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
end date	Ending date for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.

TRANSACTION INFORMATION	
Information	Definition
seller company name	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report).
customer company name	
customer DUNS number	DUNS Number for Company Unique Identification.
contract service agreement id	Unique identifier for the contract used by the seller.
transaction id	Unique reference number assigned by the seller for each transaction.
class name	Name of class. Valid entries are "Firm", "Non-Firm", "Secondary", "N/A", or {registered}.

<b>TRANSACTION INFORMATION</b>	
<b>Information</b>	<b>Definition</b>
	contract. Examples include named sub-station or generation plant.
increment name	Name of increment which would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
total transmission charge	State N/A if transmission is not provided by the selling entity, else this represents the total transmission charge associated with the identified power sale transaction.
total transaction charge	Total revenue for transaction, including for the commodity and all other services related to the commodity sale under the terms of the contract, including bundled ancillary and transmission services provided by the respondent or others. This is in dollars and cents.
FERC tariff reference	Valid Entries: FERC's designation, e.g., "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;" or "FERC Electric Rate Schedule No. 126." <sup>1</sup>

<sup>1</sup>This data element will be included as transaction data in interim filings. Thereafter, it will be reported as contract data.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON**

**UM 1002**

Wah Chang,	)	<b>AFFIDAVIT OF BERNE MARTIN HOWARD IN SUPPORT OF (1) WAH CHANG'S REPLY IN SUPPORT OF MOTION TO EXCLUDE AND (2) WAH CHANG'S RESPONSE TO PACIFICORP'S MOTION TO STRIKE</b>
	)	
Petitioner,	)	
v.	)	
PacifiCorp,	)	
	)	
Respondent.	)	

STATE OF OREGON     )  
                                  )    *ss.*  
County of Multnomah    )

I, BERNE MARTIN HOWARD, being first duly sworn, depose and say:

1. I make this exhibit in support of (1) Wah Chang's Reply in Support of Motion to Exclude Information from Protective Order and (2) Wah Chang's Response to PacifiCorp's Motion to Strike Direct Testimony and Exhibits. This affidavit is based on my personal knowledge.

2. I am the principal of Bench Mark Heuristics, LLC, an electric power industry consulting firm. I have been retained on behalf of Wah Chang in connection with this proceeding. My prefiled and in-person testimony on behalf of Wah Chang were admitted into evidence during the 2001 hearing.

3. I have worked in the electric power industry for over 25 years. I was an employee of Portland General Electric Company and affiliated enterprises for about 15 years and worked on a broad variety of analytical, regulatory and negotiation efforts during that time. In 1995 I left Portland General Electric Company to become a partner in an energy consulting firm, McCullough Research. In April 2000 I left McCullough Research to form my own consulting

1 business and have continued to work on projects for clients involving electric power markets and  
2 regulatory change.

3 4. This affidavit presents information about certain statements made by PacifiCorp  
4 concerning Exhibit WC/906.

5 5. The Declaration of Susan K. Roberts in Support of PacifiCorp's Response to  
6 Wah Chang's Motion to Exclude Information from Protective Order states, at page 2, line 25:  
7 "Exhibit WC/906 contains approximately 98,828 pages of Excel spreadsheets." The  
8 "approximately 98,828 pages of Excel spreadsheets" apparently are part of "the equivalent of  
9 over 110,000 pages" of documents referred to at page 2, line 18 of Ms. Roberts' Declaration.

10 6. Similarly, Exhibit 1 to PacifiCorp's Motion to Strike Direct Testimony and  
11 Exhibits states that WC/906 contains "Excel zipped files 98,828 pages" and counts the "98,828  
12 pages" among the "Total pages submitted 100,718" of Wah Chang exhibits listed in Exhibit 1.

13 7. Exhibit WC/906 is a compact disk containing twenty compressed digital computer  
14 data files, with a total of 159 megabytes of data, approximately 25% of the capacity of the disk.

15 8. Each compressed file contains a set of Microsoft Excel files. In total, there are  
16 350 Excel files on the disk.

17 9. I have examined a subset of 26 of these Excel files. Each Excel file I examined  
18 consists of one data worksheet containing data for transactions and charges relating to the  
19 California Independent System Operator (CAISO) and one Excel pivot table that summarizes the  
20 contents of the data worksheet. The data worksheets are all in the same format, and the Excel  
21 pivot tables are all in substantially the same format, differing slightly depending on the content  
22 of the data worksheets.

23 10. Each data worksheet and each pivot table can be examined in its entirety without  
24 opening and closing Windows or restarting Excel.

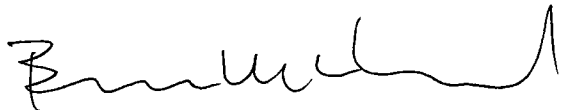
25 11. I have no reason to think that any Excel file in WC/906 that I have not examined  
26 is any different from the ones I did examine.

1 12. The volume of data on WC/906 is not unusually large or difficult to process  
2 compared with similar kinds of data files sometimes used in regulatory proceedings.

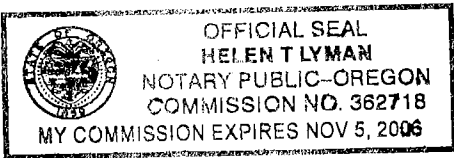
3 13. As stated above, PacifiCorp has characterized WC/906 as containing " \* \* \*  
4 approximately 98,828 pages of Excel spreadsheets." This is misleading because it suggests that  
5 the contents of the exhibit must be printed on paper to be read or to be useful. In fact the files  
6 are intended to be used with a computer and would not normally be printed.

7 14. As an analogy, consider the "burden" of processing the amount of data on  
8 WC/906 if it were a music CD. In the analogy, there would be less than 20 minutes of sound on  
9 the CD, and it could be listened to completely three times in less than an hour. The music file  
10 could be printed as page after page of 0s and 1s, which would take about 250,000 pages.<sup>1</sup> But  
11 this is not how music data is normally used, and an objection to a sound file because it is  
12 burdensome to read its printed content is unreasonable. Similarly, Excel files are normally used  
13 with a computer and are not printed out.

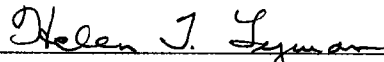
14 DATED: April 6, 2006.

15   
16 \_\_\_\_\_  
BERNE MARTIN HOWARD

17 SIGNED AND SWORN to before me this 6<sup>th</sup> day of April, 2006.



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\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Nov 5, 2006

25 <sup>1</sup> 1,333,924,800 bits, printed on 8 1/2" x 11" paper, 100 bits printed per line and 54 lines per page  
26 at 1/4" margins all sides. Of course, in standard legal format, with larger margins, numbered lines, double  
spaced, and perhaps a larger font, the printout could easily approach a million pages.

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4 **BEFORE THE PUBLIC UTILITY COMMISSION**  
5 **OF THE STATE OF OREGON**

6 **UM 1002**

7 Wah Chang,

8 Petitioner,

9 v.

10 PacifiCorp,

11 Respondent.

12 **CERTIFICATE OF SERVICE OF**  
13 **WAH CHANG'S REPLY IN SUPPORT OF**  
14 **MOTION TO EXCLUDE INFORMATION**  
15 **FROM PROTECTIVE ORDER AND**  
16 **AFFIDAVITS OF ROBERT**  
17 **McCULLOUGH AND BERNE MARTIN**  
18 **HOWARD IN SUPPORT**

19 I certify that on April 7, 2006, I served (a) Wah Chang's Reply in Support of Motion to  
20 Exclude Information from Protective Order (sealed version); (b) Wah Chang's Reply in Support  
21 of Motion to Exclude Information from Protective Order (Public Version; Redacted); (c)  
22 Affidavit of Robert McCullough in Support of Wah Chang's Reply in Support of Motion to  
23 Exclude Information from Protective Order and; (d) Affidavit of Berne Martin Howard in  
24 Support of (1) Wah Chang's Reply in Support of Motion to Exclude and (2) Wah Chang's  
25 Response to PacifiCorp's Motion to Strike, by hand delivery or by U.S. mail, properly addressed  
26 with first class postage prepaid, to the following parties or attorneys of parties:

20 PAUL GRAHAM  
21 JASON JONES  
22 DEPARTMENT OF JUSTICE  
23 REGULATED UTILITY &  
24 BUSINESS SECTION  
25 1162 COURT ST NE  
26 SALEM OR 97301-4096  
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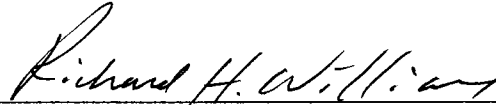
PAGE 1 – **CERTIFICATE OF SERVICE OF WAH CHANG'S REPLY IN SUPPORT OF MOTION TO EXCLUDE INFORMATION FROM PROTECTIVE ORDER AND AFFIDAVITS OF ROBERT McCULLOUGH AND BERNE MARTIN HOWARD IN SUPPORT (UM 1002)**



1 PAUL M WRIGLEY  
2 PACIFIC POWER & LIGHT  
3 825 NE MULTNOMAH STE 800  
4 PORTLAND OR 97232  
paul.wrigley@pacificcorp.com

5 DATED at Portland, Oregon, this 7th day of April, 2006.

6 LANE POWELL PC

7  
8 

9 Richard H. Williams, OSB No. 72284

10 Of Attorneys for Wah Chang  
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PAGE 2 – CERTIFICATE OF SERVICE OF WAH CHANG’S REPLY IN SUPPORT OF MOTION TO  
EXCLUDE INFORMATION FROM PROTECTIVE ORDER AND AFFIDAVITS OF  
ROBERT McCULLOUGH AND BERNE MARTIN HOWARD IN SUPPORT (UM 1002)