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3 **BEFORE THE PUBLIC UTILITY COMMISSION**
4 **OF OREGON**

5 **UM 1002**

6 WAH CHANG,

7 Petitioner,

8 v.

9 PACIFICORP,

10 Respondent.

**PACIFICORP'S RESPONSE TO
WAH CHANG'S MOTION TO COMPEL
FULL RESPONSE TO DATA REQUEST
NO. 203**

11 **I. INTRODUCTION**

12 PacifiCorp responds as follows to Wah Chang's "Motion to Compel Full Response to
13 Data Request No. 203" ("Motion"), filed August 21, 2007.

14 The Motion is nothing more than an eleventh-hour attempt to create the misimpression
15 that PacifiCorp has been uncooperative. The facts, however, show precisely the opposite. The
16 "record" with respect to Wah Chang's Data Request No. 203 is somewhat extensive, as discussed
17 in detail below. The salient facts are these:

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- 19 • Wah Chang waited until May 30, 2007 – nearly five years after the proceeding had
20 been re-opened to allow the receipt of additional evidence, and at the near-final stage
21 of the proceeding when the discovery response time had been shortened to seven
22 days – to make an extremely broad data request: "a complete and comprehensive set
23 of data documenting PacifiCorp's electricity trading activities for the years 2000 and
24 2001." The discovery turn-around time had been shortened, of course, under the
25 reasonable assumption – and the practice routinely followed in contested cases before
26 the Commission – that the scope of discovery requests would be limited to the most

1 recent round of testimony. The scope of Wah Chang's Data Request No. 203,
2 however, was far broader than the issues raised by Dr. Cicchetti's reply testimony
3 submitted on behalf of PacifiCorp on May 24, 2007.

- 4 • After PacifiCorp objected to the burdensomeness and redundancy of the data request,
5 Wah Chang *voluntarily* narrowed its scope. PacifiCorp counsel learned *for the first*
6 *time in the Motion filed on August 21* that Wah Chang was withdrawing that
7 compromise, and was demanding the full response. It is neither professional nor
8 proper to use a Motion to Compel as the means of advising opposing counsel that a
9 previously agreed upon compromise was being dishonored.
- 10 • With respect to PacifiCorp's efforts to provide data responsive to the request,
11 PacifiCorp promptly provided all of the information that Wah Chang requested. Each
12 and every time that issues with respect to the data were identified by Wah Chang,
13 PacifiCorp supplemented the response with additional data. PacifiCorp's most recent
14 supplemental response to Wah Chang's Data Request No. 203 was submitted on
15 June 29. Over six weeks later, on August 17, Wah Chang finally notified PacifiCorp
16 orally of alleged deficiencies in that supplemental response. *That very same day*
17 PacifiCorp provided additional data to address the deficiency identified by Wah
18 Chang, and indicated it would address any remaining issues.
- 19 • That entire process was short-circuited by Wah Chang's Motion. A confirming letter
20 was sent by Wah Chang's counsel mid-afternoon on Friday, August 17 identifying,
21 for the first time, details regarding additional alleged deficiencies in PacifiCorp's
22 June 29 response. On the second business day thereafter, without any discussion or
23 conferral by counsel, Wah Chang filed its Motion. These contentious,
24 litigation-by-ambush tactics of Wah Chang's counsel are neither professional nor
25 proper, and impose unnecessary burdens on the Commission's time. Moreover, the
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1 letter to Wah Chang's counsel. *See* August 3, 2007 Letter from James M. Van Nostrand to
2 Richard H. Williams, attached as Exhibit A to Affidavit of Christopher L. Garrett.

3 In a telephone conversation between counsel on August 17, 2007, Wah Chang requested
4 replacement data for the month of October 2000. Later that same day, PacifiCorp provided it.
5 *See* Garrett Aff., Exhibit B.

6 In short, after PacifiCorp objected to Data Request No. 203 on various grounds, Wah
7 Chang *voluntarily* narrowed the scope of that request. PacifiCorp was prompt and cooperative in
8 providing information responsive to the narrowed request, and in answering Wah Chang's
9 questions about the material that was provided.¹

10 On August 21, 2007, without so much as advance notice to PacifiCorp, let alone a
11 conferral, Wah Chang filed the instant Motion, which demands a complete response to Data
12 Request No. 203 in its original form.

13 III. DISCUSSION

14 This unnecessary Motion is both a waste of this Commission's time and a transparent
15 attempt to make PacifiCorp look noncooperative when the facts show otherwise.

16 PacifiCorp objected to Data Request No. 203 as burdensome and redundant of past
17 requests. As reflected in the letters attached to the Williams and Garrett Affidavits, the parties
18 then reached a compromise after Wah Chang voluntarily narrowed the scope of the request.
19 PacifiCorp did not learn that this compromise was no longer acceptable to Wah Chang until Wah
20 Chang served its Motion to Compel.

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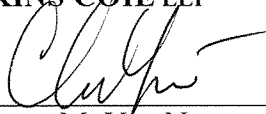
23 ¹ Thus, Wah Chang's implication that this Motion was necessary because of PacifiCorp's
24 "inadequate" responses to Data Request No. 203 is thoroughly disingenuous. PacifiCorp responded
25 promptly and cooperatively to an extremely broad request that was served far later than it should have
26 been, at a time when the response time was shortened. The minor deficiencies in the initial response to
the data request were a function of the difficulties inherent in converting and producing data of that
magnitude in a compressed time frame. The salient fact, of course, is that as soon as Wah Chang called
those deficiencies to PacifiCorp's attention, they were remedied promptly and cooperatively.

1 It should not escape notice that Wah Chang has manufactured a controversy where there
2 was none. The reason is apparent. As this proceeding nears completion, Wah Chang has failed
3 to develop any evidence that PacifiCorp engaged in any misconduct that raised the prices that
4 Wah Chang paid under the MESA. By filing this motion in close proximity to its "spoliation"
5 motion, Wah Chang is clearly seeking to paint an image of PacifiCorp as noncooperative so that
6 any deficiency in Wah Chang's case will be laid at PacifiCorp's feet rather than Wah Chang's,
7 where it belongs.

8 PacifiCorp should not have learned through a Motion to Compel that Wah Chang has
9 suddenly changed its mind and now believes that it must have all of the information sought in
10 Request No. 203. Nevertheless, PacifiCorp will provide the information. Accordingly, the
11 Motion may be denied as moot.

12 DATED: August 29, 2007

PERKINS COIE LLP

By 

James M. Van Nostrand, OSB No. 794289
Christopher L. Garrett, OSB No. 031000

Attorneys for PacifiCorp

1 **CERTIFICATE OF SERVICE**

2 I certify that I have this day served the foregoing document, encaptioned PACIFICORP'S
3 RESPONSE TO WAH CHANG'S MOTION TO COMPEL FULL RESPONSE TO DATA
4 REQUEST NO. 203, by causing a copy to be hand delivered (except as otherwise noted) to:

5 Richard H. Williams
6 Milo Petranovich
7 Lane Powell PC
8 Suite 2100
601 SW Second Avenue
Portland, OR 97204

Paul Graham (U. S. Mail)
Assistant Attorney General
Regulated Utility & Business Section
1162 Court Street NE
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9 Natalie L. Hocken (U. S. Mail)
10 Vice President and General Counsel
Pacific Power
11 825 NE Multnomah, Suite 2000
12 Portland, OR 97232

OVERNIGHT COURIER
Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St., NE #215
Salem, OR 97308-2148

13 DATED: August 29, 2007

14 **PERKINS COIE LLP**

15
16 By 

James M. Van Nostrand, OSB No. 794289
Christopher L. Garrett, OSB No. 031000

17 Attorneys for PacifiCorp
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