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

4 **UM 1002**

5 WAH CHANG,

6 Petitioner,

7 v.

8 PACIFICORP,

9 Respondent.

**PACIFICORP'S RESPONSE TO WAH
CHANG'S RENEWED,
SUPPLEMENTAL AND ALTERNATIVE
MOTIONS TO COMPEL COMPLIANCE
WITH DR 203**

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11 **I. INTRODUCTION**

12 Wah Chang's Renewed, Supplemental and Alternative Motions to Compel Compliance
13 with DR 203 ("Renewed Motion) should be denied because PacifiCorp has provided all of the
14 requested data. As Wah Chang's recitation of the parties' correspondence shows, PacifiCorp
15 worked cooperatively to address Wah Chang's questions about the data provided. The first
16 PacifiCorp learned that Wah Chang was having difficulty with PacifiCorp's October 9, 2007 data
17 production was when Wah Chang notified PacifiCorp that it would renew its motion to compel.
18 In response to Wah Chang's Renewed Motion and the accompanying affidavit of Robert
19 McCullough, PacifiCorp's experts, Charles Cicchetti and Jeffrey Dubin, have thoroughly
20 analyzed the October 9 data production and determined that all of Wah Chang's complaints are
21 groundless. The "damage" and "discrepancies" that Wah Chang identifies in the data are the
22 result of Wah Chang's experts' failure to properly interpret the data. Accordingly, the Renewed
23 Motion should be denied.

24 **II. DISCUSSION**

25 Wah Chang identifies five supposed "problems" with the October 9, 2007 data
26 production. PacifiCorp addresses them in turn.

1 First, Wah Chang contends that the data is supposedly "damaged." Renewed Motion
2 at 3; McCullough Aff. ¶¶ 13-19. The data is not damaged. Certain records in the data
3 production may have become misaligned when Wah Chang imported it because of the presence
4 of commas in some data fields. Cicchetti & Dubin Decl. at ¶ 8. This is readily resolved,
5 however, through the use of software such as Microsoft Access, which can identify and realign
6 the misaligned records with relative ease. *Id.* Mr. McCullough indicates that he used Excel, a
7 less powerful program. McCullough Aff. ¶ 18. PacifiCorp is not responsible for
8 Mr. McCullough's choice of software. In any event, while Mr. McCullough may have chosen a
9 more laborious process, it appears that he understood how to resolve the issue and that his end
10 product, by his own admission, is "largely correct." McCullough Aff. ¶ 19.

11 Second, Wah Chang asserts that the October 9 production is missing 20 transactions that
12 were provided by PacifiCorp in response to earlier data requests. Renewed Motion at 3;
13 McCullough Aff. ¶ 20. Wah Chang and Mr. McCullough are mistaken. Nineteen of those 20
14 transactions are contained within the October 9 data production. Cicchetti & Dubin Decl. ¶ 9.
15 The one remaining "missing" transaction was incorrectly included in PacifiCorp's data response
16 on June 22, 2007. It should not have been included in that response, and was correctly excluded
17 from the October 9 production. *Id.* ¶ 10. Even if one were to contend that it should have been
18 included in the October 9 production, this amounts to one "missing" transaction out of 27,446.
19 PacifiCorp therefore produced 99.996% of the relevant transactions (27,445 out of 27,446), a
20 rate that cannot reasonably support any argument that PacifiCorp materially failed to comply
21 with DR 203. *Id.* ¶ 11.

22 Third, Wah Chang asserts that the October 9 data production is missing one transaction
23 that PacifiCorp reported to Dow Jones, and that there are other discrepancies between the data
24 provided to Dow Jones and the data provided to Wah Chang. Renewed Motion at 3;
25 McCullough Aff. ¶ 21. Wah Chang does not support this assertion with any examples, however.

1 Furthermore, PacifiCorp's experts have determined that there is a "perfect match" in that every
2 single transaction at COB, Palo Verde, and Mid-C that PacifiCorp reported to Dow Jones is
3 present in the October 9 data that PacifiCorp provided to Wah Chang. Cicchetti & Dubin Decl.
4 ¶ 12. There are three (3) COB transactions with minor discrepancies between the Dow Jones
5 data and the October 9 data, but the discrepancies are trivial and the October 9 data is more
6 reliable. *Id.* Thus, Wah Chang's third criticism should be dismissed as unsubstantiated.
7 Moreover, Wah Chang's belief that "discrepancies" exist is probably the result of errors made by
8 Wah Chang's experts in the process of scanning hard copies of PacifiCorp's data. PacifiCorp's
9 experts have discovered numerous such errors. *Id.* ¶ 13.

10 Fourth, Wah Chang asserts that PacifiCorp's October 9 production does not include
11 certain transactions that are contained in the database of an unrelated party, Enron. Renewed
12 Motion at 3; McCullough Aff. ¶ 22. Mr. McCullough identifies only one such transaction,
13 however, transaction no. 69566. McCullough Aff. ¶ 22. Mr. McCullough is mistaken:
14 transaction no. 69566 is one of the nineteen transactions wrongly identified by Mr. McCullough
15 as "missing" even though they do in fact exist in the October 9 data production. See Cicchetti &
16 Dubin Decl. ¶ 14. In any case, PacifiCorp is responsible only for producing the data in its
17 possession that is responsive to DR 203. PacifiCorp does not have access to Enron's database.
18 Any perceived discrepancy between PacifiCorp's data and Enron's data could be attributable to
19 errors in the latter. The fact that PacifiCorp's October 9 data production corresponds perfectly
20 (contrary to Wah Chang's assertions) with PacifiCorp's reports to Dow Jones and with earlier
21 productions to Wah Chang is conclusive as to whether PacifiCorp has fully responded to
22 DR 203.

23 Fifth and finally, Wah Chang asserts that there is a discrepancy between PacifiCorp's
24 October 9 production and a short-term data set that PacifiCorp provided to FERC in 2002.
25 Renewed Motion at 3; McCullough Aff. ¶ 23. Once again, Mr. McCullough identifies just one
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1 such alleged "discrepancy," involving PacifiCorp's sales to Enron on March 17, 2001.
2 Mr. McCullough contends that the FERC data response shows 1,272 MWh on that date, while
3 the October 9 production shows 1,036 MWh for the same date. *Id.* Once again, Mr.
4 McCullough is mistaken. Both data sets show the same figure: 1,036 MWh. There is no
5 discrepancy. Cicchetti & Dubin Decl. ¶ 14.

6 **III. CONCLUSION**

7 Wah Chang's Renewed Motion is based on a flawed evaluation of the data that
8 PacifiCorp provided on October 9, 2007. The problem that Wah Chang identifies with
9 "misaligned data" is (and was) readily resolved. With respect to the alleged twenty "missing"
10 transactions, the evidence shows that nineteen of them are not missing at all and that the
11 twentieth transaction was correctly excluded. Nor is there any credence to Wah Chang's
12 unsubstantiated assertions that the October 9 production is inconsistent with PacifiCorp's data
13 reports to Dow Jones or FERC.

14 For all of these reasons, Wah Chang's Renewed Motion should be denied.

15 DATED: November 21, 2007

PERKINS COIE LLP

16
17 By 

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

20 Attorneys for PacifiCorp
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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 RENEWED, SUPPLEMENTAL AND ALTERNATIVE
4 MOTIONS TO COMPEL COMPLIANCE WITH DR 203, by causing a copy to be hand
5 delivered (except as otherwise noted) to:

6 Richard H. Williams
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14 DATED: November 21, 2007.

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