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AUG 23 2007

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

Public Utility Commission of Oregon  
Administrative Hearings Division

UM 1002

WAH CHANG,

Petitioner,

v.

PACIFICORP,

Respondent.

**PACIFICORP'S RESPONSE TO WAH  
CHANG'S MOTION FOR FINDING  
REGARDING PACIFICORP'S  
PARTICIPATION IN ELECTRICITY  
MARKET MANIPULATION**

**I. INTRODUCTION**

PacifiCorp submits the following response to Wah Chang's "Motion for Finding Regarding PacifiCorp's Participation in Electricity Market Manipulation," filed August 7, 2007 (the "Motion"). Wah Chang argues that because audio recordings of PacifiCorp trader conversations from an allegedly significant time period are missing, the Commission should take the extraordinary step of "inferring" findings that the evidence does not otherwise support: that PacifiCorp engaged in "direct, active and knowing" participation on electricity market manipulation schemes, and that such schemes "contributed to the inflated prices" that Wah Chang paid under the Master Electric Services Agreement ("MESA"). Five years after Wah Chang obtained a court order requiring this proceeding to be re-opened to permit it to present additional evidence bearing on these issues (*i.e.*, whether any participation by PacifiCorp was "direct, active and knowing" and whether it "contributed to inflated prices" under the MESA), Wah Chang has failed to offer any evidence demonstrating that it is entitled to any relief in this proceeding. In the absence of any tangible evidence showing "the most compelling circumstances"<sup>1</sup> that would justify retroactive modification of the MESA, Wah Chang asks that

<sup>1</sup> This was the standard enunciated by the Commission in Order No. 01-873 at 6.

1 the Commission simply create, by "inference," the necessary evidence that it failed to produce  
2 over the past five years. In doing so, Wah Chang relies on a civil litigation theory of "spoliation  
3 of evidence" that is unsupported by the facts and circumstances of this case.

4 The Commission should deny the Motion. At most, Wah Chang has demonstrated that  
5 audio recordings which appear to have existed at some time in the past no longer exist. Wah  
6 Chang has produced no evidence, however, that those recordings (assuming they existed) were  
7 intentionally destroyed or mishandled, or that PacifiCorp did anything wrong. Most importantly,  
8 Wah Chang has not produced any evidence that the audio recordings were lost or destroyed *at a*  
9 *time when PacifiCorp had any legal duty to preserve them.* In fact, PacifiCorp had no legal  
10 duty to make or preserve the recordings at issue, so the fact that certain of them have gone  
11 missing is not probative of misconduct. Wah Chang infers that the audio recordings were  
12 deliberately destroyed because they were damaging; because PacifiCorp had no duty to preserve  
13 them, however, the evidence equally supports the inference that the recordings were simply lost.  
14 Where there is no evidence of willful destruction, the remedy that Wah Chang seeks to draw  
15 from "spoliation of evidence" cases is radically inappropriate.

16 Apart from the inapplicability of the "spoliation of evidence" theory to the facts and  
17 circumstances of this case, the Motion must also fail for the further reason that the loss of the  
18 "missing" audio recordings has *no material impact on Wah Chang's ability to present its case.*  
19 Wah Chang creates the impression in the Motion that the missing tapes are critical to its case, as  
20 if no other means are available to determine the extent of PacifiCorp's alleged participation in  
21 market manipulation schemes. Yet Wah Chang has access to documentation for virtually all  
22 wholesale transactions during the periods requested by Wah Chang. In addition to the  
23 transaction records produced by PacifiCorp, the expert witness retained by Wah Chang,  
24 Mr. Robert McCullough, has conducted forensic analyses of several other data bases of  
25 wholesale transactions throughout the Western energy crisis, including Enron's "Enpower" data  
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1 base. In addition, he has access to Enron's trading tapes which would have recorded  
2 PacifiCorp's transactions with Enron.<sup>2</sup> Other evidence exists to demonstrate the extent, if any, of  
3 PacifiCorp participation in Enron "schemes,"<sup>3</sup> irrespective of the existence, or not, of the  
4 "missing" audio recordings. Quite simply, the available evidence fails to make the necessary  
5 showing that would justify granting Wah Chang relief in this docket, so Wah Chang desperately  
6 seeks to use "inference" to fill the gaping hole in its case. The theory it relies upon in its Motion  
7 is misplaced, and the importance which it places on the "missing" evidence is vastly overstated.

8 In short, Wah Chang has produced no evidence whatsoever that would justify the  
9 extraordinary relief that Wah Chang requests – that the Commission simply "infer" the central  
10 element of Wah Chang's claim for relief. The Motion should be denied.

## 11 II. BACKGROUND

12 Wah Chang has known for years that PacifiCorp has been unable to locate tapes of trader  
13 conversations for the periods May 2, 2000 through June 28, 2000 and July 11, 2000 through  
14 July 24, 2000. In response to a Wah Chang data request, PacifiCorp told Wah Chang exactly  
15 what PacifiCorp said in previous proceedings before FERC – namely, that PacifiCorp believed  
16 that the missing recordings did not exist because the recording system was either not turned  
17 and/or the light indicating that trader conversations were being recorded was malfunctioning. In  
18 responding *in January 2003* to data requests in FERC Docket Nos. EL00-95-069 and

19 \_\_\_\_\_  
20 <sup>2</sup> See Rebuttal Testimony of Robert McCullough (WC/869) at 56 (listing sources of information).

21 <sup>3</sup> In this regard, Wah Chang's contention that PacifiCorp "became Enron's most frequent trading  
22 partner" at COB, including participation in "hundreds of illegitimate non-transmission buy/resell  
23 transactions" (Motion at 7), is misleading. First, it is clear from the Enron-related proceedings at FERC  
24 that PacifiCorp had a "bit part" – even a "non-speaking role" – in the Enron play. The recent Initial  
25 Decision in *Enron Power Marketing*, Docket No. EL03-180, 119 FERC ¶ 63,013 (June 21, 2007)  
26 contains a thorough discussion of all the schemes in which Enron was engaged, and identifies many of the  
counter-parties to Enron's schemes. *PacifiCorp is not mentioned even once throughout that entire order  
as a counter-party to any Enron schemes.* Second, as was apparent from the testimony of Dr. Cicchetti  
at the evidentiary hearings, the "illegitimate" buy/resell transactions at COB were not reported to Dow  
Jones and, by definition, had no impact on the COB Index prices paid by Wah Chang under the MESA.  
See PacifiCorp/33, Cicchetti-Dubin/2. Once again, Wah Chang seeks to "tar" PacifiCorp with the Enron  
brush, but the association is exaggerated and the supposed impact on prices paid by Wah Chang is  
fictional.

1 EL00-98-058, PacifiCorp indicated that it had discovered certain of the audio recordings of  
2 trader conversations to be missing.<sup>4</sup> PacifiCorp also submitted an affidavit on June 20, 2003 to  
3 the Office of Market Oversight and Investigations that clearly identified the same audio  
4 recordings as missing.<sup>5</sup> Notwithstanding these disclosures to parties in the FERC proceedings  
5 and to the FERC investigation staff, Wah Chang makes the unsupported allegation that  
6 PacifiCorp "did *not* disclose that the recordings were missing" in FERC proceedings.

7 In its Motion, Wah Chang cites contemporaneous documentary evidence suggesting that  
8 for at least a few of the days during the referenced time periods, the tapes did exist for at least a  
9 very short time. From this, Wah Chang draws the conclusion that the tapes were deliberately  
10 destroyed in an attempt to hide evidence of misconduct. As shown below, Wah Chang's  
11 inference is without logical or legal support.

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17 <sup>4</sup> See Docket Nos. EL00-95-069, EL00-98-058, Objections and Initial Response of PacifiCorp to  
18 the California Parties' Second Set of Data Requests at 14-16 ("PacifiCorp has identified certain missing  
19 tapes containing trader conversations for the dates May 2, 2000 through June 28, 2000, and July 11, 2000  
20 through July 24, 2000. PacifiCorp believes that on these dates the recording system was inadvertently not  
21 turned on to record the trader conversations and/or a light indicating that the conversations were being  
22 recorded was malfunctioning"); Objections and Initial Response of PacifiCorp to the California Parties'  
23 Fourth Set of Data Requests at 8-9, 12 ("PacifiCorp believes that on these dates the recording system was  
24 inadvertently not turned on to record the trader conversations and/or a light indicating that the  
25 conversations were being recorded was malfunctioning"). Applicable excerpts from these responses are  
26 included as Attachments 1 and 2, respectively.

<sup>5</sup> Response of PacifiCorp to the May 29, 2003 Data Requests and Request for Admission of the  
Office of Market Oversight and Investigations and the Office Markets, Tariffs and Rates Concerning  
Physical Withholding of Power in Western Markets, Affidavit of Stan K. Watters on Behalf of  
PacifiCorp, at page 10 ("During the Requested Period, PacifiCorp personnel recorded the telephone lines  
of the company's traders, schedulers and transaction processing personnel. With the exception of the time  
period May 2, 2000 through June 28, 2000, and July 11, 2000 through July 24, 2000, PacifiCorp has tape  
recordings of these personnel available. During the noted periods of time, PacifiCorp believes the  
recording system was inadvertently not turned on to record the trader conversations and/or a light  
indicating that the conversations were being recorded was malfunctioning."). Applicable excerpts from  
this response are included as Attachment 3.

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### III. DISCUSSION

A. **An Adverse Inference Is Not Warranted Merely Because Evidence Is Missing, Where There Is No Indication That A Party Acted Willfully Or Violated A Legal Duty Of Preservation.**

Relying on five cases that are clearly distinguishable (as discussed further in Section B below), Wah Chang argues that the Commission should infer that the missing tapes contain evidence that PacifiCorp manipulated the Western energy markets in a way that had a material affect on the Dow COB Index. The flaw in Wah Chang's analysis is that the remedy Wah Chang requests—an adverse inference based on the absence of evidence—is an extreme remedy applied where evidence has been spoliated, *i.e.*, intentionally destroyed to hide damaging evidence, or lost after a duty of preservation was triggered. These key elements of the "spoliation" theory on which the Motion is based are not present in this case: Wah Chang has adduced no evidence that PacifiCorp acted intentionally to destroy recordings or that the missing recordings were lost or destroyed at a time when PacifiCorp had any legal duty to preserve them.

The mere fact that evidence is "missing," no matter how surprising or inexplicable, does not justify an adverse inference. For example, in *Bashir v. Amtrak*, 119 F3d 929 (11th Cir 1997), the plaintiff brought a wrongful death claim against the railroad, alleging that it caused a fatal accident by speeding through a railroad crossing. Under federal law, the railroad was not "speeding" unless it was traveling over 80 miles per hour. *Id.* at 931. Three witnesses testified that the train was traveling approximately 70 miles per hour at the time of the accident. *Id.* at 930. The train was equipped with a "speed tape" that continuously recorded the speed of the train, but the railroad failed to preserve the speed tape, an omission that remained "wholly unexplained." *Id.* at 932. On appeal, the issue was whether the "district court should have applied the adverse inference rule" based on the missing tape. *Id.* at 931. The court held that "an adverse inference is drawn from a party's failure to preserve evidence only when the absence of that evidence is predicated on bad faith." *Id.* The court ruled that "there was no probative

1 evidence in this case to indicate [the railroad] purposely lost or destroyed the relevant portion of  
2 the speed tape" and thus declined to draw an adverse inference from its loss. *Id.*

3 Other cases amply establish that an adverse inference is not appropriate unless the  
4 circumstances show bad faith. *See Medical Laboratory Mgmt Consultants v American*  
5 *Broadcasting Companies, Inc*, 306 F3d 806, 823-824 (9th Cir 2002) (affirming trial court's  
6 decision not to draw an adverse inference from missing evidence, noting that the loss did not  
7 "evidence bad faith, was not intentional, and reflected only inadvertence that at most was  
8 negligence," and therefore "a rational jury would not infer that Defendants' loss of the [evidence]  
9 indicated that the [evidence] threatened Defendants' legal position and needed to be covered  
10 up"); *Brewer v Quaker State Oil Ref Corp*, 72 F3d 326, 334 (3d Cir 1995) (holding that the  
11 district court did not abuse its discretion in refusing an adverse inference when the circumstances  
12 indicated that the evidence was inadvertently lost and the responsible party searched for it but  
13 was unable to find it); *Latimore v Citibank Fed Sav Bank*, 151 F3d 712, 716 (7th Cir 1998)  
14 (holding that the inference that a missing record contained adverse evidence was not justified  
15 when the record's loss was inadvertent); *Vick v Texas Employment Comm'n*, 514 F2d 734, 737  
16 (5th Cir 1975) ("The adverse inference to be drawn from destruction of records is predicated on  
17 bad conduct of the defendant. Moreover, the circumstances of the act must manifest bad faith.  
18 Mere negligence is not enough, for it does not sustain an inference of consciousness of a weak  
19 case.") (internal quotation omitted).

20 Thus, in order to draw an adverse inference from the fact that certain audio recordings are  
21 missing, it is not enough for Wah Chang to show that the recordings are missing. It is not  
22 enough for the tapes' absence to be surprising or inexplicable. *Amtrak*, supra (denying adverse  
23 inference even where the tape's disappearance was "wholly unexplained"). Rather, the  
24 circumstances must show that PacifiCorp willfully destroyed the tapes in bad faith because of its  
25 "consciousness of a weak case." *Vick*, supra. Wah Chang has produced no such evidence.

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1 Indeed, as far as anyone can tell, the recordings (if they did exist) were lost or destroyed long  
2 before May 2002, when Wah Chang petitioned to reopen this proceeding in order to consider the  
3 issues to which the recordings are asserted to be relevant. Loss or destruction prior to May 2002  
4 would support no logical inference that PacifiCorp feared the use of the tapes as evidence in this  
5 or any other proceeding. In short, the facts support no inference of bad faith, "blameworthiness,"  
6 or any misconduct that would justify the extraordinary relief that Wah Chang requests.

7 **B. The Cases Cited By Wah Chang Provide No Support For The Relief That Wah**  
8 **Chang Requests.**

9 The cases cited by Wah Chang are not inconsistent with those discussed above. In *In re*  
10 *Kelly's Estate*, 150 Or 598, 626, 46 P2d 84 (1935), the relatives of the decedent challenged his  
11 suspiciously generous bequest to his much younger nurse, who lived with the decedent and  
12 isolated him from friends and relatives. The court noted "evidence of a meretricious  
13 relationship," and that "sensual pleasures were employed and for about two weeks before the will  
14 was prepared [the nurse] was in [the decedent's] room both night and day." *Id.* at 625. The nurse  
15 also burned the decedent's letters a few days before his death because, as she wrote to a friend, it  
16 would "be hell if some of [the decedent's] kin got hold of them." *Id.* at 656. From those  
17 circumstances, the court allowed an adverse inference regarding the contents of the destroyed  
18 letters.

19 In *Booher v Brown*, 173 Or 464, 474-76, 146 P2d 71 (1944), the plaintiff sued the  
20 administrator of her sister-in-law's estate, claiming that she entered into a written contract with  
21 the decedent to care for her in exchange for being bequeathed her house. *Id.* at 466-67. The  
22 plaintiff claimed that the contract was created in a series of letters between the plaintiff and the  
23 decedent. *Id.* at 470. Shortly before moving in with the decedent, the plaintiff burned her letters  
24 from the decedent, and she burned the decedent's copies of their correspondence (spanning  
25 twenty years) shortly after moving in. *Id.* at 474. The plaintiff testified that the destroyed letters  
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1 supported her claim, but the court noted the suspicious circumstances surrounding the "willful  
2 destruction" of almost all documentary evidence that allegedly supported her claim. *Id.*

3 Because both *Booher* and *Kelly's Estate* involved actual, direct evidence of intentional  
4 destruction, they provide no support in a case such as this, where there is no such evidence.  
5 *Booher* is irrelevant for the additional reason that it involved the intentional destruction by a  
6 plaintiff of evidence that allegedly would have supported her claims.

7 Wah Chang also cites *McDonald v Sun Oil Co*, 423 F Supp 2d 1114 (D Or 2006), in  
8 which the court *refused* to instruct the jury that it could draw an adverse inference from the  
9 destruction of evidence. In *McDonald*, the defendants' experts failed to produce, and later  
10 destroyed, notes and drafts associated with their expert submissions. *Id.* at 1121. Four months  
11 later, the plaintiffs filed a motion *in limine* requesting that the testimony be excluded or, in the  
12 alternative, that the jury be instructed that it could draw an adverse inference from the  
13 destruction of the notes and drafts. *Id.* In denying the motion, the court noted that "there is no  
14 showing that the destroyed notes would have been relevant to some issue at trial, or that the  
15 experts or counsel knew this relevance." *Id.* at 1122. The court further noted:

16 [A]n adverse inference requires more than negligent loss, it  
17 requires a showing that the party knew the evidence was relevant  
18 to some issue at trial and that his willful conduct resulted in its loss  
or destruction' and 'some quantum of blameworthiness is required.'

19 *Id.* at 1122 (quoting *Trigon Ins Co v United States*, 204 FRD 277, 282-83 (ED Va 2001)).

20 Wah Chang has not demonstrated that PacifiCorp had a duty to preserve the missing  
21 recordings, much less presented evidence of "blameworthiness." Wah Chang has not  
22 demonstrated that PacifiCorp "knew the evidence was relevant to some issue at trial," because  
23 Wah Chang obviously *cannot*—there is no evidence that the tapes (if they existed) were  
24 destroyed or lost at time when PacifiCorp had any reason to believe that it would become  
25 involved in legal proceedings in which the tapes might be relevant. The "evidence" equally  
26 supports the inference that the tapes were lost or inadvertently destroyed at some time very



1 shortly after they were created. As Wah Chang acknowledges, the primary value of these tapes  
2 is as contemporaneous evidence of the terms of transactions, in case those terms are later  
3 disputed.<sup>6</sup> During the time at issue, the tapes were considered to have limited long-term value or  
4 significance.<sup>7</sup> Thus, it is not unreasonable to conclude that they could have been inadvertently  
5 lost, destroyed, or re-used.

6 Wah Chang relies most extensively on *Trigon*, a Virginia case that involved the willful  
7 destruction of evidence by the United States. The United States had hired a litigation consulting  
8 company to provide experts. *Trigon* sought discovery related to the experts' testimony, but the  
9 experts destroyed many relevant documents, some of which were recovered via forensic analysis  
10 of computers. *Id.* at 290. In concluding that the United States was subject to sanctions, the court  
11 stressed that the United States intended to avoid a *known duty* to preserve the evidence:

12 [T]he United States was obligated to produce the allegedly spoiled  
13 materials from the time of their genesis. \* \* \* The ample advance  
14 notice given to the United States was sufficient to have prompted  
15 the United States affirmatively to assure the preservation of the  
allegedly spoiled documents by the [consulting company] and the  
testifying experts. Therefore, the United States was duty-bound  
not to destroy such documents.

16 *Id.* at 288-89. The court also noted that the United States was "aware of the value of the  
17 documents which were spoiled." *Id.* at 290. As a remedy, the court permitted an adverse  
18 inference regarding the credibility of the expert witnesses.

19 Notably, although Wah Chang, unlike *Trigon*, has not presented any evidence that  
20 PacifiCorp willfully destroyed evidence or even had a duty to preserve the tapes at issue, Wah

21 \_\_\_\_\_  
22 <sup>6</sup> While PacifiCorp agrees that the documents cited in Wah Chang's Motion indicate that at least  
23 some of these audio tapes existed for a brief time, during PacifiCorp's investigation in May 2002 in  
24 response to the FERC investigations, there was no such indication that the tapes had existed. PacifiCorp  
25 inquired of the personnel responsible for custody of the tapes, and the best explanation of what may have  
26 occurred was a tape machine malfunction, as disclosed in the FERC proceedings. While this explanation  
may now be revealed to have been in error, at the time PacifiCorp was not aware of any evidence  
indicating that the tapes may have existed at some point in time.

<sup>7</sup> It has been only relatively recently, as a direct result of the FERC investigations and lawsuits  
arising out the Western energy crisis, that trader audio tapes have been highlighted as sources of  
information to be used for any purpose other than confirming transactions.

1 Chang seeks a much greater remedy than what the court granted in *Trigon*. The *Trigon* court  
2 permitted an adverse inference regarding the *credibility* of the expert witnesses, but Wah Chang  
3 asks the Commission to infer the central *fact* that Wah Chang must prove, which is that  
4 PacifiCorp engaged in "direct, active and knowing" participation in manipulation of western  
5 energy markets and that such participation "contributed to the inflated prices" that Wah Chang  
6 paid under the MESA. Such an extreme remedy is plainly disproportionate to the evidence in  
7 this case, which supports an inference of *inadvertent* destruction as strongly as any other.<sup>8</sup>

8 **C. Because The Evidence At Issue Can Be, And Has Been, Obtained From Other**  
9 **Sources, The Absence Of The Audio Recordings Has No Material Impact On Wah**  
10 **Chang's Ability To Present Its Case.**

11 That the remedy sought by Wah Chang is extreme and disproportionate is even more  
12 apparent when it is considered that the loss of the "missing" audio recordings is of no practical  
13 consequence to Wah Chang's ability to present its case. As discussed above, the extent, if any, of  
14 PacifiCorp's alleged participation in market manipulation schemes can be determined from a  
15 variety of other sources, and Wah Chang's expert witness, Mr. McCullough, is the self-  
16 proclaimed expert in forensic analyses of all the transaction databases that are available to  
17 uncover alleged wrongdoing.<sup>9</sup> Given the availability of information regarding the PacifiCorp  
18 transactions discussed on the "missing" audio recordings from numerous other sources with  
19 which Mr. McCullough is intimately familiar, the absence of the audio recordings is, at most, a  
20 source of irritation in the prosecution of Wah Chang's case. In these circumstances, the absence  
21 of the audio recordings is tantamount to harmless error,<sup>10</sup> and does not justify granting any relief

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22 <sup>8</sup> The final case cited by Wah Chang does not involve spoliation and provides no support  
23 whatsoever for Wah Chang's Motion. *Stephens v Bohlman*, 138, Or App 381, 909 P2d 208 (Or App  
24 1996), was a medical malpractice case in which the court weighed the admissibility of evidence that two  
25 of the defendants, a doctor and a hospital, conspired to conceal the cause of the patient's death. The case  
26 had nothing to do with spoliation.

27 <sup>9</sup> See Rebuttal Testimony of Robert McCullough (WC/869) at 56 (listing sources of information  
28 now available).

29 <sup>10</sup> See, eg, *Medical Laboratory*, 306 F3d at 825 (drawing no adverse inference from loss of  
30 evidence where other evidence was available); *Village of Roselle v Commonwealth Edison Co*, 859  
31 NE2d 1 (Ill App 2006) (claim against utility for negligent destruction of evidence failed because there

1 whatsoever to Wah Chang, much less provide a basis for filling by "inference" the gaping hole in  
2 Wah Chang's case that remains after consideration of the tangible evidence Wah Chang has  
3 produced.

#### 4 IV. CONCLUSION

5 Because Wah Chang has produced no evidence that the missing audio recordings were  
6 deliberately destroyed or lost at a time when PacifiCorp had any legal duty to preserve them, no  
7 adverse inference may logically or legally be drawn from the mere fact that they are missing.  
8 Accordingly, the Commission should deny Wah Chang's Motion.

9 DATED: August 22, 2007

10 PERKINS COIE LLP

11 By 

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

14 Attorneys for PacifiCorp

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24 was no indication that the destruction of evidence caused damages); *Donohoe v American Isuzu Motors,*  
25 *Inc*, 157 FRD 238, 244 (MD Pa 1994) (refusing to draw an adverse inference because the destruction of  
26 evidence did not prejudice the other party); *Hardwick Bros Co, II v US*, 36 Fed Cl 347, 418 (Fed Cl 1996)  
("since [plaintiff] has not demonstrated the criticalness or controlling nature of any lost or destroyed  
documents, the court will not speculate on the nature or content of these documents and, therefore, refuses  
to draw adverse inferences with respect to the missing documents").

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

San Diego Gas & Electric Company,	)	Docket Nos.	EL00-95-069
Complainant,	)		EL00-98-058
	)		
v.	)		
	)		
Sellers of Energy and Ancillary Services	)		
into Markets Operated by the California	)		
Independent System Operator Corporation	)		
and the California Power Exchange,	)		
Respondent.	)		
	)		
Investigation of Practices of the California	)		
Independent System Operator and the California	)		
Power Exchange	)		

**OBJECTIONS AND INITIAL RESPONSES OF PACIFICORP TO THE  
CALIFORNIA PARTIES' SECOND SET OF DATA REQUESTS**

Pursuant to Rules 406 and 410 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.406, 385.410 (2002), and the Commission's November 20, 2002 Order on Motion for Discovery Order ("November 20, 2002 Discovery Order"), PacifiCorp hereby submits the following objections and initial responses to the data requests submitted by the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company (collectively, "California Parties") on December 20, 2002 (hereinafter, the "Data Requests").

PacifiCorp will use its best efforts to search and to produce additional documents responsive to these requests as soon as possible. However, the sheer volume of some of the material requested, such as e-mails and phone tapes, is such as to preclude meaningful

production within the requested time frame. To the extent that the California Parties so desire, PacifiCorp will discuss ways of narrowing and targeting the requests so as to provide more prompt and meaningful responses.

### GENERAL OBJECTIONS

The General Objections set forth below apply to each of the data requests submitted by the California Parties and shall have the same force and effect as if set forth in full in the objections to each data request.

1. PacifiCorp objects to the Instructions and Definitions in the Data Requests to the extent they call for the disclosure of information or the production of documents that are protected by the attorney-client privilege, the attorney work-product doctrine, including drafts of testimony and exhibits that were prepared in anticipation of litigation (*see, e.g.*, 18 C.F.R. § 385.402(b) (“[a] participant may not obtain discovery of material prepared in anticipation of litigation by another participant”), or are otherwise protected from disclosure under the Commission’s Rules of Practice and Procedure or the Federal Rules of Civil Procedure and relevant case law. To the extent that any protected information or material is disclosed, such disclosure is not intentional and shall not be construed as a waiver of PacifiCorp’s rights under any applicable privilege or immunity.

2. PacifiCorp objects to Instruction No. 1 in the Data Requests as unreasonably vague insofar as it fails to state whether the January 1, 2000 to June 20, 2001 time period identified relates to the date on which applicable “data, documents, and information” were created or to other characteristics of the applicable data, documents, or information sought.

3. PacifiCorp objects to Instruction No. 8 insofar as it is contrary to the requirements under the Commission’s Rules of Practice and Procedure concerning discovery matters and Rule

403(d) in particular, 18 C.F.R. § 385.403(d). If complete when made, PacifiCorp is not required to supplement data responses when and if responsive information is later required, except as provided in the Commission's Rules.

4. PacifiCorp objects to Definition No. 1 in the Data Requests -- "You" -- to the extent that it defines the responding parties to include affiliated entities. Unless indicated otherwise, the Data Requests will be treated as if directed to PacifiCorp only, and all responses will be limited to this party.

5. PacifiCorp objects to the Data Requests to the extent that they seek information, data or documents that are beyond the scope of the rulings made by Discovery Master Judge Young at the December 17, 2002 oral argument in this proceeding.

6. PacifiCorp objects to the Data Requests to the extent that they seek information, data or documents that are duplicative of the discovery conducted in other Commission proceedings, in violation of Paragraph 26 of the Commission's "Order on Motion for Discovery Order," issued in these proceedings on November 20, 2002, and are therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. PacifiCorp objects to any and all Data Requests and Instructions and Definitions to the extent that such Data Request, Instruction or Definition seeks to impose obligations in excess of those mandated by the Rules of Practice and Procedure of the Federal Energy Regulatory Commission and by Discovery Master Judge Young at the December 17, 2002 oral argument in this proceeding.

8. PacifiCorp objects to the Data Requests to the extent that they seek disclosure of documents or information that is unreasonably cumulative or duplicative or is obtainable from other sources that are more convenient, less burdensome or less expensive. PacifiCorp also

objects to the extent that the Data Requests seek publicly available information, or information available to the California Parties in its own files.

9. PacifiCorp objects to the Data Requests to the extent that they call for the production or identification of data that is not relevant to the subject matter of the issues in this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence.

10. PacifiCorp objects to any and all Data Requests and Instructions and Definitions to the extent that such Data Request, Instruction or Definition requests that PacifiCorp identify documents and then produce those same documents. PacifiCorp will produce, rather than identify, such documents to the extent the documents are responsive, relevant and are not subject to any other general or specific objections.

11. PacifiCorp objects to any and all Data Requests and Instructions and Definitions to the extent that such Data Request, Instruction or Definition purports to require PacifiCorp to gather or provide documents or things in the possession, custody or control of third parties.

12. PacifiCorp objects to components of the Data Requests that direct PacifiCorp to prepare new studies, analyses or calculations, or to organize data in a manner other than that in which they currently exist, or otherwise create documents that do not currently exist.

13. PacifiCorp objects to any and all Data Requests to the extent that they would require PacifiCorp to provide information that, if provided to a third party, would expose PacifiCorp to claims of liability or sanctions for breach of obligations to such party, as for example, claims of violations of intellectual property laws or contractual (*e.g.*, licensing) arrangements.

14. PacifiCorp objects to the Data Requests to the extent that they call for proprietary and confidential information and/or trade secrets, the disclosure of which would be prejudicial to PacifiCorp, its customers, or to any witness testifying on behalf of PacifiCorp.

15. PacifiCorp objects to each question propounded in the Data Requests to the extent that it fails to describe the documents or other materials requested with reasonable particularity. Those components are unreasonably vague and unduly burdensome.

16. PacifiCorp reserves the right to modify or expand these objections in light of subsequent proceedings in this matter.

#### **SPECIFIC OBJECTIONS AND RESPONSES**

In addition to the General Objections set forth above, in response to the individually numbered requests in California Parties' Second Set of Data Requests to PacifiCorp served on December 20, 2002, PacifiCorp hereby objects and responds as follows.



**SAN DIEGO GAS & ELECTRIC COMPANY, ET AL.  
DOCKET NOS. EL00-95-069, EL00-98-058**

**CALIFORNIA PARTIES' SECOND SET OF DATA REQUESTS  
TO PACIFICORP DATED DECEMBER 20, 2002**

**CAL-PAC-46**

Do you have or have you had a document retention policy? If so, please state when the current document retention policy was adopted, and produce it and all previous policies that have been effect from January 1, 2000 to the present, providing the applicable date(s) for each such policy.

- CAL-PAC-46.1. Apart from any formal document retention policy, please provide details of your electronic back-up system(s) from January 1, 2000 to the present, including, but not limited to retention and rotation policies of back-up tapes for electronic information, including company email, whether such systems and retention and rotation policies have changed during the time period specified above, and the reasons for the change(s) if any.
- CAL-PAC-46.2. Provide a description of all efforts designed to preserve and retrieve documents and electronic information, including email, from January 1, 2000 to the present relating to potential market manipulation claims in the California energy market, and indicate whether any documents or electronic information, including email, relating to potential market manipulation claims in the California energy market have been lost or destroyed. If any documents or electronic information, including email, relating to potential market manipulation claims in the California energy market have been lost or destroyed, identify the dates of such loss, the nature of the documents or electronic information lost or destroyed, and the persons involved with the destruction or loss.
- CAL-PAC-46.3. Provide a description of all efforts designed to preserve and retrieve documents and electronic information, including email, produced, held, or distributed by any of your former employee(s), consultants, or agents from January 1, 2000 to the present relating to potential market manipulation claims in the California energy market, and indicate whether any documents or electronic information, including email, relating to potential market manipulation claims in the California energy market have been lost or destroyed. If any documents or electronic information, including email, relating to potential market manipulation claims in the California energy market have been lost or destroyed, identify the dates of such loss, the nature of the documents or

electronic information lost or destroyed, and the persons involved with the destruction or loss.

- CAL-PAC-46.4. Provide the name(s) and title(s) of all persons who have been involved in the retrieval, preservation and production of documents or electronic information, including email, relating to potential market manipulation claims in the California energy market and describe the efforts made to retrieve, preserve, and produce such documents or electronic information, including email.
- CAL-PAC-46.5. Are you aware of any current or former employee(s), consultant(s), or agent(s) of yours or others who have destroyed or who may have destroyed any documents or electronic information, including email, relating to potential market manipulation claims in the California energy market? If so, please identify the name(s), title(s) and relationship of such employee(s), consultant(s), or agent(s) to you, and produce any investigative reports you have prepared or had prepared on your behalf regarding this destruction.
- CAL-PAC-46.6. Have any current or former employee(s), consultant(s) or agent(s) of yours raised any questions, during the period of January 1, 2000 to the present, as to the appropriateness or legality of any energy trades or trading activity involving the California energy market during the time period of January 1, 2000 through June 20, 2001? If so, please identify that person, and produce any and all documents associated with the expression of concern involved. In addition, produce all documents reflecting any response to the concern raised.
- CAL-PAC-46.7. Have you or any of your affiliates ever taken any disciplinary action, during the period of January 1, 2000 to the present, against an employee, consultant or agent who, either before or after the disciplinary action was taken, raised questions, allegations, or concerns regarding the appropriateness or legality of any energy trades or trading activity involving the California energy market during the time period of January 1, 2000 to June 20, 2001, or about the loss or destruction or about the possible loss or destruction of documents concerning the same? If so, please identify the name, address and telephone number of any and all such persons, and indicate whether this person is still employed by you. In addition, please provide details of your response to the questions, allegations or concerns raised as well as all documents that refer or relate to such concerns and disciplinary actions.

**PacifiCorp's Objection and Response:**

PacifiCorp objects to CAL-PAC-46 and its subparts on the following grounds:

- (1) Some of the information requested is not relevant to the issue of "market manipulation" in California spot markets nor is it likely to lead to the discovery of admissible evidence.
- (2) Some of the information requested is outside the temporal scope of this proceeding as set by the November 20 Discovery Order and Judge Young's December 17, 2002 discovery ruling. Data concerning the time from June 21, 2002 through the present are outside the scope of this proceeding.
- (3) This request is overly broad and unduly burdensome, particularly in failure to tailor the request to retention, preservation, and retrieval efforts in response to a specific investigative proceeding or other request. In an effort to provide a meaningful response, PacifiCorp interprets this request to seek information relating to retention, preservation, and retrieval efforts initiated in response to FERC proceeding PA02-2-000.
- (4) This request is vague and ambiguous, particularly in its use of the terms "appropriateness" and "others."
- (5) Some of the information request is protected by attorney client, work product, or other evidentiary privileges.
- (6) Subparts CAL-PAC-46.6 and CAL-PAC-46.7 are not reasonably related to the issue of document retention, which is the identified subject matter of CAL-PAC-46. As such, these two subparts should have been designated as separate data requests.

Subject to and without waiving the foregoing objections, PacifiCorp states that responsive documents are attached hereto as Exhibit 46. The effective dates for the document retention policies are indicated on each document, with the exception of the offsite retention policy which has been in effect in its current form since 1999. PacifiCorp further responds as follows:

- CAL-PAC-46.1. All of the current e-mail backup systems conform to PacifiCorp's offsite retention policy. *See* Exhibit 46. No changes have been made to the offsite retention policy since October 1999.
- CAL-PAC-46.2. With respect to electronic material, PacifiCorp currently allows users to maintain up to 120 days worth of e-mail and attached documents within the Exchange System. Users are also allowed to designate and to keep pertinent documents and e-mails from the Exchange System in personal folders created under Microsoft Outlook and Microsoft Exchange Client Software. PacifiCorp sets no retention date on the personal folders. Personal folders are backed up and retained with the Netware Backups.

The retrieval of e-mail messages and attached documents relating to the California energy market in response to FERC proceeding PA02-2-000 were recovered using the following method.

1. PST folders were recovered from every monthly Netware Backup available.
2. Sherpa Software PST Attender was utilized to search the e-mails and attached documents in the PST folders for specific keywords provided by PacifiCorp's counsel. A list of those keywords and rules for searching the PST folders is attached hereto as Exhibit 46.2
3. All e-mails and attachments containing the designated keywords were turned over to PacifiCorp's counsel.
4. The backup tapes, which included the search through the PST folders, were copied and turned over to PacifiCorp's counsel.

PacifiCorp also undertook specific retention, preservation and retrieval efforts with respect to information and hard copies of documents in response to FERC proceeding PA02-2-000, including, but not limited to, the review of documents and the interview of numerous employees with knowledge of relevant facts. Those efforts are detailed in the Watters' Affidavit, *see* Exhibit 1.2, attached to PacifiCorp's Objections and Initial Responses to the California Parties' First Set of Data Requests.

PacifiCorp is not aware of any documents or electronic information relating to potential market manipulation claims in the California energy market that were lost or destroyed.

However, PacifiCorp has identified certain missing tapes containing trader conversations for the dates May 2, 2000 through June 28, 2000, and July 11, 2000 through July 24, 2000. PacifiCorp believes that on these dates the recording system was inadvertently not turned on to record the trader conversations and/or a light indicating that the conversations were being recorded was malfunctioning. No transcripts were made for these missing dates.

CAL-PAC-46.3.

All electronic backup tapes containing any PST folder for every former PacifiCorp employee, consultant or agent, were turned over to PacifiCorp's counsel. *See* Response to CAL-PAC-46.2. PacifiCorp is not aware of any documents or electronic

information relating to potential market manipulation claims in the California energy market that were lost or destroyed.

CAL-PAC-46.4.

The following PacifiCorp employees were involved in the retrieval, preservation, and/or production of documents and electronic materials relating to potential market manipulation claims in the California energy market in response to FERC data requests in the PA02-2-000 proceeding:

Tom Alonzo, Energy Trader  
John Apperson, Trading Manager  
Tom Beck, Managing Director of Trading Finance Systems  
Vic LaCroix, Fuel Contracts Administrator  
Richard W. Dowdy, Resource Planning Manager  
Gary Eldridge, Energy Trader  
Margo Everett, Director of Risk Management  
Mark Fisher, Energy Trader  
Daryl Gerrard, Vice President of Transmission Systems  
George Goben, Marketing Manager  
George Hays, Systems Administrator  
Mark Ito, Vice President for Risk Management  
Paul Kroeger, Trading Manager  
Stacey Kusters, Manager of Origination  
Gregory Maxfield, Supervisor of Trading  
Jay Phillips, Systems Administrator  
Jim Portouw, Director of Trading  
Valerie Sabo, Senior Risk Manager  
Heather Sixkill, Gas Trader  
Stanley K. Watters, Vice President of Trading and Origination  
Paul Wood, Market Trader  
Adam Woodruff, Senior Systems Administrator

The following in-house counsel were extensively involved in the retrieval, preservation and production of documents and electronic materials in response to FERC data requests in the PA02-2-000 proceeding: Andrew Haller, Natalie Hocken, Jeff Erb and Dale Rasmussen.

The following outside counsel from Troutman Sanders LLP were extensively involved in the retrieval, preservation and production of documents and electronic materials in response to FERC data requests in the PA02-2-000 proceeding: Stuart Pierson, Sotiris Planzos, Roger Smith, Jennifer Dowling and Megan Fleischman.

CAL-PAC-46.5.

PacifiCorp is not aware of any documents or electronic information related to market manipulation in the California

energy market that have been knowingly destroyed during the relevant period. PacifiCorp states that it has no investigative reports relating to any such document destruction.

CAL-PAC-46.6. PacifiCorp is not aware of any current or former employee who raised a question as to the appropriateness or legality of energy trades or trading activity involving the California energy market during January 1, 2000 through June 20, 2001. PacifiCorp detailed its knowledge of this issue in the Stan Watters' affidavit, submitted to FERC during the PA02-2-000 investigation. *See* Response to CAL-PAC-1.2, Exhibit 1.2.

CAL-PAC-46.7. PacifiCorp states that it has taken no disciplinary action against any employee related to questions concerning the legality of energy trades or trading activities involving the relevant markets during the period January 1, 2000 through June 20, 2001, or about the loss or destruction of documents regarding the same.

Objection prepared by Counsel.  
Response prepared by persons identified in CAL-PAC-46.4.

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, served the foregoing on the California Parties via United States Mail and by e-mail to the LISTSERV to other participants to this proceeding.

Dated in Washington, DC, this 9th day of January, 2003.

Antoine P. Cobb

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

San Diego Gas & Electric Company,	)	
Complainant	)	
	)	
v.	)	Docket Nos. EL00-95-069
	)	
Sellers of Energy and Ancillary Service Into	)	
Markets Operated by the California	)	
Independent System Operator Corporation	)	
and the California Power Exchange,	)	
Respondents.	)	
	)	
Investigation of Practices of the California	)	Docket Nos. EL00-98-058
Independent System Operator and the	)	
California Power Exchange.	)	

**OBJECTIONS AND INITIAL RESPONSES OF PACIFICORP TO THE  
CALIFORNIA PARTIES' FOURTH SET OF DATA REQUESTS**

Pursuant to Rules 406 and 410 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. §§ 385.406, 385.410 (2002), and the Commission's November 20, 2002 Order on Motion for Discovery Order ("November 20, 2002 Discovery Order"), PacifiCorp hereby submits the following objections and initial responses to the data requests submitted by the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company (collectively, "California Parties") on January 10, 2003 (hereinafter, the "Data Requests").



PacifiCorp will use its best efforts to search and to produce additional documents responsive to these requests as soon as possible. However, the sheer volume of some of the material requested, such as e-mails and phone tapes, is such as to preclude meaningful production within the requested time frame. To the extent that the California Parties so desire, PacifiCorp will discuss ways of narrowing and targeting the requests so as to provide more prompt and meaningful responses.

### **GENERAL OBJECTIONS**

The General Objections set forth below apply to each of the data requests submitted by the California Parties and shall have the same force and effect as if set forth in full in the objections to each data request.

1. PacifiCorp objects to the Instructions and Definitions in the Data Requests to the extent they call for the disclosure of information or the production of documents that are protected by the attorney-client privilege, the attorney work-product doctrine, including drafts of testimony and exhibits that were prepared in anticipation of litigation (*see, e.g.*, 18 C.F.R. § 385.402(b) (“[a] participant may not obtain discovery of material prepared in anticipation of litigation by another participant”), or are otherwise protected from disclosure under the Commission’s Rules of Practice and Procedure or the Federal Rules of Civil Procedure and relevant case law. To the extent that any protected information or material is disclosed, such disclosure is not intentional and shall not be construed as a waiver of PacifiCorp’s rights under any applicable privilege or immunity.

2. PacifiCorp objects to Instruction No. 1 in the Data Requests as unreasonably vague insofar as it fails to state whether the January 1, 2000 to June 20, 2001 time period identified relates to the date on which applicable “data, documents, and information” were created or to other characteristics of the applicable data, documents, or information sought.

3. PacifiCorp objects to Instruction No. 8 insofar as it is contrary to the requirements under the Commission's Rules of Practice and Procedure concerning discovery matters and Rule 403(d) in particular, 18 C.F.R. § 385.403(d). If complete when made, PacifiCorp is not required to supplement data responses when and if responsive information is later required, except as provided in the Commission's Rules.

4. PacifiCorp objects to Definition No. 1 in the Data Requests -- "You" -- to the extent that it defines the responding parties to include affiliated entities. Unless indicated otherwise, the Data Requests will be treated as if directed to PacifiCorp only, and all responses will be limited to this party.

5. PacifiCorp objects to the Data Requests to the extent that they seek information, data or documents that are beyond the scope of the rulings made by Discovery Master Judge Young at the December 17, 2002 oral argument in this proceeding.

6. PacifiCorp objects to the Data Requests to the extent that they seek information, data or documents that are duplicative of the discovery conducted in other Commission proceedings, in violation of Paragraph 26 of the Commission's "Order on Motion for Discovery Order," issued in these proceedings on November 20, 2002, and are therefore neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

7. PacifiCorp objects to any and all Data Requests and Instructions and Definitions to the extent that such Data Request, Instruction or Definition seeks to impose obligations in excess of those mandated by the Rules of Practice and Procedure of the Federal Energy Regulatory Commission and by Discovery Master Judge Young at the December 17, 2002 oral argument in this proceeding.

8. PacifiCorp objects to the Data Requests to the extent that they seek disclosure of documents or information that is unreasonably cumulative or duplicative or is obtainable from other sources that are more convenient, less burdensome or less expensive. PacifiCorp also objects to the extent that the Data Requests seek publicly available information, or information available to the California Parties in its own files.

9. PacifiCorp objects to the Data Requests to the extent that they call for the production or identification of data that is not relevant to the subject matter of the issues in this proceeding and that is not reasonably calculated to lead to the discovery of admissible evidence.

10. PacifiCorp objects to any and all Data Requests and Instructions and Definitions to the extent that such Data Request, Instruction or Definition requests that PacifiCorp identify documents and then produce those same documents. PacifiCorp will produce, rather than identify, such documents to the extent the documents are responsive, relevant and are not subject to any other general or specific objections.

11. PacifiCorp objects to any and all Data Requests and Instructions and Definitions to the extent that such Data Request, Instruction or Definition purports to require PacifiCorp to gather or provide documents or things in the possession, custody or control of third parties.

12. PacifiCorp objects to components of the Data Requests that direct PacifiCorp to prepare new studies, analyses or calculations, or to organize data in a manner other than that in which they currently exist, or otherwise create documents that do not currently exist.

13. PacifiCorp objects to any and all Data Requests to the extent that they would require PacifiCorp to provide information that, if provided to a third party, would expose PacifiCorp to claims of liability or sanctions for breach of obligations to such party, as for example, claims of violations of intellectual property laws or contractual (*e.g.*, licensing) arrangements.

14. PacifiCorp objects to the Data Requests to the extent that they call for proprietary and confidential information and/or trade secrets, the disclosure of which would be prejudicial to PacifiCorp, its customers, or to any witness testifying on behalf of PacifiCorp.

15. PacifiCorp objects to each question propounded in the Data Requests to the extent that it fails to describe the documents or other materials requested with reasonable particularity. Those components are unreasonably vague and unduly burdensome.

16. PacifiCorp reserves the right to modify or expand these objections in light of subsequent proceedings in this matter.

#### **SPECIFIC OBJECTIONS AND RESPONSES**

In addition to the General Objections set forth above, in response to the individually numbered requests in California Parties' Fourth Set of Data Requests to PacifiCorp served on January 10, 2003, PacifiCorp hereby objects and responds as follows.

**SAN DIEGO GAS & ELECTRIC COMPANY, ET AL.  
DOCKET NOS. EL00-95-069, EL00-98-058**

**CALIFORNIA PARTIES' FOURTH SET OF DATA REQUESTS  
TO PACIFICORP DATED JANUARY 10, 2003**

**CAL-PAC-97**

If you did record telephone conversations of your traders, plant operators, and/or schedulers or SCs, state:

- a. whether such records still exist for the period of January 1, 2000 through June 20, 2001;
- b. where such records are located;
- c. in what format such records exist;
- d. whether such records are searchable by
  1. date;
  2. name of trader;
  3. counterparty to the conversation;
  4. particular words;
  5. region of the country where the energy or ancillary services were produced or sold.

**PacifiCorp's Objection and Response:**

PacifiCorp objects to CAL-PAC-97 on the following grounds:

- (1) Some of the information requested is not relevant to the issue of "market manipulation" in California spot markets nor is it likely to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection, PacifiCorp states that it is in possession of tapes containing the recorded conversations of its traders, schedulers and SCs for the period of January 1, 2000 through June 20, 2001, with the exception of tapes containing recorded conversations for the dates May 2, 2000 through June 28, 2000, and July 11, 2000 through July 24, 2000. *See* Response to CAL-PAC-46.2.

PacifiCorp's tapes containing the recorded conversations of its traders, schedulers and SCs are located at PacifiCorp's corporate headquarters in Portland, Oregon. These tapes may be searched by the phone number of the line recorded and date only. It is not possible to search the

tapes using the name of a trader, the counterparty to the conversation, or particular words. Although it is not possible to search the tapes by the region of the country where the energy was produced or sold, PacifiCorp only conducted transactions in the WECC. As such, all of PacifiCorp's tapes are for WECC transactions only.

Objection prepared by Counsel.

Response prepared by Lori Wisbeck, Manager, Transaction Processing.

**SAN DIEGO GAS & ELECTRIC COMPANY, ET AL.  
DOCKET NOS. EL00-95-069, EL00-98-058**

**CALIFORNIA PARTIES' FOURTH SET OF DATA REQUESTS  
TO PACIFICORP DATED JANUARY 10, 2003**

**CAL-PAC-100**

State whether you claim that any of the recorded conversations between your traders, plant operators, and schedulers or SCs who bought, sold, traded, or otherwise transacted in energy, ancillary services, and transmission markets in California and the WSCC have been lost, destroyed, or rendered otherwise unable to be reviewed?

CAL-PAC-100.1. If so, identify the specific dates and traders, plant operators, and/or schedulers or SCs recorded on any such lost, destroyed, or otherwise unreviewable recorded conversations.

CAL-PAC-100.2. If so, state whether any such conversations were transcribed and provide the transcription(s).

**PacifiCorp's Objection and Response:**

PacifiCorp objects to CAL-PAC-100 and its subparts on the following ground:

- (1) Some of the information requested is not relevant to the issue of "market manipulation" in California spot markets nor is it likely to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objection, PacifiCorp has identified certain missing tapes containing trader conversations for the dates May 2, 2000 through June 28, 2000, and July 11, 2000 through July 24, 2000. PacifiCorp believes that on these dates the recording system was inadvertently not turned on to record the trader conversations and/or a light indicating that the conversations were being recorded was malfunctioning. No transcripts were made for these missing dates. *See* Response to CAL-PAC-46.2.

Objection and Response prepared by Counsel.

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, served the foregoing on the California Parties via hand delivery and by e-mail to the LISTSERV to other participants to this proceeding.

Dated in Washington, DC, this 27th day of January, 2003.

Antoine P. Cobb



## **EXHIBIT 3**

**CONFIDENTIAL INFORMATION  
REDACTED PURSUANT TO OPUC  
PROTECTIVE ORDER 01-149 IN DOCKET  
UM1002.**

**THE INFORMATION CONTAINED  
HEREIN MAY BE SHOWN ONLY TO  
QUALIFIED PERSONS AS DEFINED IN THE  
PROTECTIVE**

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**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing document, encaptioned PACIFICORP'S RESPONSE TO WAH CHANG'S MOTION FOR FINDING REGARDING PACIFICORP'S PARTICIPATION IN ELECTRICITY MARKET MANIPULATION, by causing a copy to be hand delivered (except as otherwise noted) to:

Richard H. Williams  
Milo Petranovich  
Lane Powell PC  
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  
Salem, OR 97301-4096

Natalie L. Hocken (U. S. Mail)  
Vice President and General Counsel  
Pacific Power  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

DATED: August 22, 2007

**PERKINS COIE LLP**

By 

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

Attorneys for PacifiCorp