

April 25, 2006

BY ELECTRONIC MAIL (*PUC.FilingCenter@state.or.us*)
AND 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 is Wah Chang's Opposition to PacifiCorp's Motion for Extension of Time to File Reply Testimony. A courtesy copy for the judge's file is included with the mailed original.

Very truly yours,



Richard H. Williams

Enclosure
cc (w/enc): Service List

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

UM 1002

WAH CHANG,

Petitioner,

v.

PACIFICORP,

Respondent.

**WAH CHANG'S OPPOSITION
TO PACIFICORP'S MOTION
FOR EXTENSION OF TIME
TO FILE REPLY TESTIMONY**

This memorandum states Wah Chang's opposition to PacifiCorp's Motion for Extension of Time to File Reply Testimony ("Motion for Extension"). PacifiCorp's reply testimony is currently due May 18, 2006. PacifiCorp seeks an order delaying the filing to a date 45 days after the Commission rules on PacifiCorp's pending motion to strike Wah Chang's testimony and exhibits and on Wah Chang's pending motion to exclude certain information from the Protective Order.

Wah Chang opposes the extension because it needlessly would result in further delay. PacifiCorp does not need to know the outcome of Wah Chang's motion in order to prepare its case, and a delay to accommodate a ruling on that motion is not warranted. PacifiCorp acknowledges that the motion to exclude is not the primary basis for the requested delay. Motion for Extension at 1, n. 1.

Nor is a delay warranted by PacifiCorp's motion to strike. To prepare its case, PacifiCorp does not need to know "exactly," Motion for Extension at 2, what exhibits the Commission will receive. The requested extension would make sense only if the motion to strike

1 resulted in a ruling that restricted in a fundamental way the additional evidence Wah Chang is
2 permitted to present to the Commission pursuant to the court's order. But the low likelihood of
3 such a ruling does not warrant further delay of this already extended proceeding. The
4 fundamental evidence supporting Wah Chang's case has been known to PacifiCorp since not
5 later than December 15, 2005, when Wah Chang filed it, and it is not likely that Wah Chang will
6 be prevented from presenting it.

7 In particular, the major issue presented by PacifiCorp's motion to strike is its contention
8 that Robert McCullough's testimony is inadmissible because it states facts of which Mr.
9 McCullough does not have "personal knowledge" and because it states opinions not properly the
10 subject of expert testimony. As discussed in Wah Chang's opposition, these contentions lack
11 merit.¹ The Commission's rule,² and not the Oregon Evidence Code ("OEC"), governs the
12 relevance and admissibility of evidence in this proceeding. Further, the OEC is an inappropriate
13 guideline because it was intended to apply to trials decided by lay juries, and not to regulatory
14 proceedings decided by Commissioners knowledgeable in the subject matter. In any event, Mr.
15 McCullough's testimony is admissible under the OEC.³ Permitting PacifiCorp to await the
16 outcome of its motion to strike Mr. McCullough's testimony would result in needless delay.

17 Finally, PacifiCorp can prepare its case without knowing the outcome of its motion to
18 strike Wah Chang's exhibits. PacifiCorp asserts that it "will incur potentially unnecessary
19 expense if it is forced to review the boxes of exhibits that are not referenced in
20 Mr. McCullough's testimony," Motion for Extension at 3, but PacifiCorp exaggerates the
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23 ¹ Wah Chang's Response to PacifiCorp's Motion to Strike Petitioner's Direct Testimony
24 and Exhibits ("Response to Motion to Strike").

25 ² OAR 860-014-0045(1).

26 ³ Response to Motion to Strike at 4-10.

1 volume of Wah Chang's exhibits and the burden of reviewing them, as it did in its motion to
2 strike and in its opposition to Wah Chang's motion to exclude.⁴

3 Contrary to PacifiCorp's implication, this is not a situation in which PacifiCorp must
4 review and prepare to rebut "boxes" full of discrete, unrelated exhibits whose import Wah Chang
5 has not explained. Most exhibits directly relate in a self-evident way to Mr. McCullough's
6 testimony. For example, the trader conversation transcripts and corresponding audio files are
7 numerous, but not burdensome to review, precisely because they show a repetitive pattern and
8 practice by PacifiCorp's traders, the significance of which is explained by Mr. McCullough. The
9 few exhibits that stand aside from Mr. McCullough's testimony are self-explanatory or have
10 been explained by Wah Chang, or both.⁵ Thus, PacifiCorp exaggerates the "potentially
11 unnecessary expense," and the risk that PacifiCorp will incur substantial expense fruitlessly does
12 not warrant a delay in the proceedings.

13 CONCLUSION

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15 Wah Chang filed its direct testimony and exhibits on December 15, 2005.⁶ PacifiCorp
16 did not file its motion to strike until three months later, on March 16, 2006, and filed it then in
17 reaction to Wah Chang's motion to exclude.⁷ Further, PacifiCorp did not file its Motion for
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19 ⁴ See Wah Chang's Reply in Support of Motion to Exclude Information from Protective
20 Order at 3-6; Response to Motion to Strike at 10.

21 ⁵ Response to Motion to Strike, Appendix 1 and Appendix 2. PacifiCorp's notion that
22 Wah Chang's exhibits might support unexplained arguments that Wah Chang intends to spring
23 on PacifiCorp (or on the Commission on appeal) is fanciful. The Commission is not likely to
24 accept an argument not grounded in testimony or a self-explanatory exhibit, and a reviewing
25 court is not likely to consider an evidence-based argument not made to the Commission.

26 ⁶ Wah Chang filed errata and a corrected version of Mr. McCullough's testimony on
January 3, 2006. The errata did not substantially change the testimony.

⁷ PacifiCorp filed its motion to strike simultaneously with its opposition to Wah Chang's
motion to exclude.

1 Extension for yet another month, on April 19, 2006. PacifiCorp's slowness in bringing its
2 motions, whether or not tactical, is itself cause for denying the extension.

3 In support of its motion, PacifiCorp points to Wah Chang's request in August 2005 for an
4 additional three months to file its direct case. Motion for Extension at 2, 3. Wah Chang's
5 request was made and granted because of particular circumstances that precluded it from meeting
6 the original filing date.⁸ PacifiCorp's request is not made on such grounds. Rather, it is made
7 because of the pendency of its own, belated motion to strike, a motion that lacks merit, and Wah
8 Chang opposes the Motion for Extension for that reason.

9 DATED this 25th day of April, 2006.

10 LANE POWELL PC

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12
13 By *Richard H. Williams*
14 Richard H. Williams, OSB No. 72284
15 Milo Petranovich, OSB No. 81337

16 Attorneys for Petitioner Wah Chang
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25 _____
26 ⁸ See Ruling issued August 18, 2005.

CERTIFICATE OF SERVICE

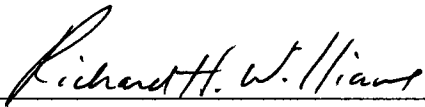
I certify that on April 25, 2006, I served WAH CHANG'S OPPOSITION TO PACIFICORP'S MOTION FOR EXTENSION OF TIME TO FILE REPLY TESTIMONY upon all parties of record in this proceeding, by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-013-0070, to the following parties or attorneys of parties:

PAUL GRAHAM
JASON JONES
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BUSINESS SECTION
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825 NE MULTNOMAH STE 800
PORTLAND OR 97232

Dated at Portland, Oregon, this 25th day of April, 2006.


Richard H. Williams, OSB No. 72284
Of Attorneys for Petitioner Wah Chang