

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1002

WAH CHANG,

Petitioner,

v.

PACIFICORP,

Respondent.

**AFFIDAVIT OF CHRISTOPHER L.
GARRETT IN RESPONSE TO WAH
CHANG'S MOTION TO COMPEL
FULL RESPONSE TO DATA
REQUEST NO. 203**

STATE OF OREGON)
) ss.
County of Multnomah)

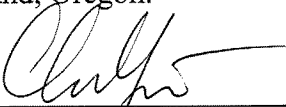
I, Christopher L. Garrett, being first duly sworn, depose and say:

1. I am an attorney representing PacifiCorp in this proceeding. I make this affidavit in response to Wah Chang's Motion to Compel Full Response to Data Request No. 203. This affidavit is based on my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of a letter dated August 3, 2007 from James M. Van Nostrand to Richard H. Williams.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated August 17, 2007 from me to Richard H. Williams.

EXECUTED on August 29, 2007 at Portland, Oregon.



Christopher L. Garrett



James M. Van Nostrand
PHONE: 503.727.2162
FAX: 503.346.2162
EMAIL: JVanNostrand@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

August 3, 2007

VIA E-MAIL AND U.S. MAIL

Mr. Richard H. Williams
Lane Powell PC
Suite 2100
601 SW Second Avenue
Portland, OR 97204-3158

**Re: *Wah Chang v. PacifiCorp;*
PUC Docket No. UM 1002**

Dear Rich:

This is in follow-up to our meeting on Tuesday morning, July 31 regarding "Possible Anomalies in PacifiCorp Discovery." Since that meeting, PacifiCorp has reviewed the particular data requests and responses identified in the presentation, and has examined the data base "searches" that produced the particular responses to the data requests. PacifiCorp offers the following, by way of explanation of the claimed "anomalies":

- With respect to claimed "anomalies" in the transactions reported in the response to Data Request No. 155 versus transactions reported in the response to Data Request No. 203, the information requested in each data request, and thus the information provided in response to each data request, are entirely different. Data Request No. 155 requested information "for both the purchase and sale legs at the 767 transactions referred to in paragraph 82 of the Affidavit of Stanley K. Watters." As Mr. McCullough presumably is aware, these are transactions in the Real Time market. Data Request No. 203 requested "a complete and comprehensive set of data documenting PacifiCorp's electricity trading activities for the years 2000 and 2001."¹

¹ Subsequently, the scope of this request was narrowed to include only the period April 1, 2000 to June 30, 2001, exclusive of the period July 1, 2000 through November 30, 2000. Notwithstanding

24878-0008/LEGAL13447090.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

EXHIBIT A
PAGE 1 OF 4

As Mr. McCullough presumably is also aware, this "complete and comprehensive set of data" includes all *forward* market transactions, in addition to the *Real Time* market transactions included in the response to Data Request No. 155. The data produced in response to Data Request No. 203 had two tabs on the excel spreadsheet. One tab is labeled "Forward" and one tab is labeled "Real Time." Moreover, the data produced in PacifiCorp's supplemental response to Data Request No. 203 had two sets of files per month. The forward market transactions can be found in the files labeled: MKT_(Month)_(Year) and the Real Time market transactions can be found in the files labeled: RT_(Month)_(Year). It should come as no surprise that the number of Real Time transactions reported for a specified period in response to Data Request No. 155 would be substantially smaller than the number of Real Time *and* forward market purchase transactions reported for the same period in response to Data Request No. 203. To suggest "anomalies" between two disparately defined sets of data would seem to be a pointless exercise.

- With respect to the slide entitled "Hourly Transactions by Month," we would note that the entry under DR 203 for October-00 is in error. Our review of the MKT_10_2000 and RT_10_2000 files indicates a number closer to 68,525 transactions (based on a simple count of the rows of data) rather than the 6,137 transactions listed on the slide you provided. Thus, it appears this potential "anomaly" for the month of October 2000 compared to other monthly volumes as suggested by the slide and the discussions does not exist.
- With respect to reliance on my characterizations of data in the June 11, 2007 objection to Data Request No. 203, this is misplaced. The purpose of my summary description of the response to Data Request No. 155 was to illustrate the rough magnitude of the data requested in Data Request No. 203, not to make any representations about our "belief that DR 155 was a complete set of transactions for July 2000 through November 2000." As described above, the response to Data Request No. 155 was obviously a small set of the complete set of transactions for July 2000 through November 2000, consistent with the request for "both the purchase and sale legs at the 767 transactions" which were, by definition, Real Time transactions. The data provided in the data request responses speak for themselves; my characterization of that data is of no evidentiary value, and frankly adds nothing to the discussion about whether there were "anomalies" in the discovery responses.

this narrowing of the time period, the Supplemental Response to Data Request No. 203 included hourly information for the transactions for the period July 1, 2000 through November 30, 2000.

- With respect to the exclusion of the counter-parties from the response to Data Request No. 203, this is simply a matter of how the search of PacifiCorp's data base was defined. Apparently, the search was erroneously defined to exclude the counter-parties, even though that was part of the requested information in Data Request No. 203. Imputing a nefarious intent to this exclusion is senseless, however; had the omission been identified to PacifiCorp at the time, we easily could have supplemented the data with counter-party information, just as we supplemented the response to Data Request No. 203 with hourly information when you requested that we do so. (See Supplemental Response to Data Request No. 203 provided on June 29, 2007, in response to your letter of June 25, 2007 requesting hourly data.)
- With respect to comparisons between the response to Data Request No. 155 to the response to Data Request No. 204, the comparison is inapposite. As noted above, the data requested in Data Request No. 155 relate to certain Real Time transactions (specifically, information "for both the purchase and sale legs at the 767 transactions referred to in paragraph 82 of the Affidavit of Stanley K. Watters"). Data Request No. 204, on the other hand, requests "data and other information furnished by PacifiCorp to FERC." As clearly indicated in the material included as the Confidential Attachment to Request No. 204, these data consist of PacifiCorp's "ISO and PX sales/purchases" for the period May 2000 through September 2000.² The difference in the data requested –and provided – in response to Data Request No. 155 versus the data requested –and provided – in response to Data Request No. 204 is apparent from the questions themselves, and the responses thereto. Again, to suggest "anomalies" between two disparately defined sets of data would seem to be a pointless exercise.

² See email from Jeffrey M. Jakubiak to George Billinson dated February 26, 2004, included in Confidential Attachment to Request No. 204.

Mr. Richard H. Williams
August 3, 2007
Page 4

We appreciate you bringing your allegations of "possible anomalies" to our attention, and providing us with an opportunity to respond.³ We are hopeful that you and your client will find this response helpful.

Very truly yours,



James M. Van Nostrand

JMV:dma

cc: Natalie L. Hocken

³ That being said, the claim that "someone at PacifiCorp is deleting transaction data from the productions that [you] have been receiving" is a very serious allegation, and should not be lodged without a careful analysis and a detailed comparison of the specific terms of the underlying production requests. Such a prior analysis and comparison seem not have been undertaken here.



1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Christopher L. Garrett
PHONE: (503) 727-2078
FAX: (503) 346-2078
EMAIL: CGarrett@perkinscoie.com

August 17, 2007

HAND DELIVERED

Richard H. Williams
Lane Powell PC
Suite 2100
601 SW Second Avenue
Portland, OR 97204-3158

Re: Pacificorp/Wah Chang

Dear Rich:

In follow-up to your conversation with Jamie Van Nostrand this morning, we are transmitting herewith replacement data for the month of October 2000, as a supplemental response to Data Request No. 203. We understand you may have additional issues with other data provided in response to Data Request No. 203, which we will review upon receipt of your letter.

Very truly yours,

Christopher L. Garrett

CLG:SKR:jm
encs.

cc: Natalie Hocken
James Van Nostrand

24878-0008/LEGAL13484735.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES
MENLO PARK · OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

EXHIBIT B
PAGE 1 OF 1

1 **CERTIFICATE OF SERVICE**

2 I certify that I have this day served the foregoing document, encaptioned AFFIDAVIT
3 OF CHRISTOPHER L. GARRETT IN SUPPORT OF RESPONSE TO WAH CHANG'S
4 MOTION TO COMPEL FULL RESPONSE TO DATA REQUEST No. 203, by causing a copy
5 to be hand delivered (except as otherwise noted) to:

6 Richard H. Williams
7 Milo Petranovich
8 Lane Powell PC
9 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

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

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

14 DATED: August 29, 2007

15 **PERKINS COIE LLP**

16
17 By 

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

18 Attorneys for PacifiCorp
19
20
21
22
23
24
25
26