

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1002

WAH CHANG,

Petitioner,

v.

PACIFICORP,

Respondent.

PACIFICORP'S MOTION FOR
EXTENSION OF TIME TO FILE
REPLY TESTIMONY

**EXPEDITED CONSIDERATION
REQUESTED**

MOTION

PacifiCorp moves for an order extending PacifiCorp's time for filing its reply testimony until 45 days after the Commission decides PacifiCorp's pending motion to strike and Wah Chang's pending motion to exclude. PacifiCorp makes this motion on the grounds that PacifiCorp's reply testimony will necessarily be shaped by the Commission's rulings on the parties' pending motions.¹ Wah Chang opposes PacifiCorp's motion, but has offered no reason for its opposition.

PacifiCorp requests expedited consideration of this Motion. Expedited consideration is necessary because PacifiCorp's current deadline for filing its reply testimony is May 18, 2006,

¹ Although it will be easier for PacifiCorp to file its reply testimony after it knows whether it will be allowed to maintain the confidentiality of its documents, this motion is based primary on PacifiCorp's need to know what will remain of Wah Chang's direct case after the Commission rules on the motion to strike. PacifiCorp assumes, however, that the parties' motions will be decided at the same time.

approximately four weeks from the date of this Motion. PacifiCorp needs to know as soon as possible whether it must use this limited time to prepare its reply to a record that may change, or whether it will be able to wait until the Commission rules on the parties' pending motions to more efficiently finalize its reply testimony.

DISCUSSION

I. Procedural History

In April 2005, the Commission adopted a case schedule that required Wah Chang to file its direct testimony by September 16, 2005, and required PacifiCorp to file its reply testimony by February 17, 2006. *See* Ruling dated April 28, 2005. On August 5, 2005, Wah Chang moved to extend its deadline for filing direct testimony by three months. Specifically, Wah Chang requested that its direct testimony not be due until December 15, 2005. The Commission granted this request and adopted Wah Chang's proposed schedule. *See* Ruling dated August 18, 2005. This ruling effectively enlarged the time that Wah Chang had to prepare its direct testimony after the parties' initial scheduling conference from five months to eight, but left PacifiCorp with five months to file its reply testimony, as contemplated by the parties' original schedule.

Wah Chang filed its testimony on December 15, 2005. Included in the filing were 110 exhibits comprised of hundreds of thousands of pages of information. Almost one-third of the exhibits were not referenced in the testimony and only a few pages of many large exhibits were referenced. Shortly after it filed its direct testimony, Wah Chang filed a motion to exclude from the Commission's protective order most of the information that PacifiCorp has designated as confidential. PacifiCorp then filed a motion to strike portions of Wah Chang's direct testimony and several boxes of exhibits submitted with that testimony. PacifiCorp has requested oral argument on both of these motions, but argument has not yet been scheduled. PacifiCorp's reply memorandum in support of its motion to strike is currently due April 21, 2006. *See* Ruling dated April 13, 2006. PacifiCorp's reply testimony is currently due May 18, 2006. *See* Ruling dated August 18, 2005.

II. Analysis

Extending PacifiCorp's deadline for filing its reply testimony is necessary to avoid unnecessary expense and undue burden on PacifiCorp because, until the Commission resolves the parties' pending motions, PacifiCorp does not know exactly what evidence it needs to address in its reply testimony. If the Commission grants PacifiCorp's motion to strike the portions of Robert McCullough's direct testimony that consist of alleged "facts" of which McCullough has no personal knowledge and opinions on matters that are not proper subjects of expert testimony, PacifiCorp will not need to reply to those portions of McCullough's testimony. Unless PacifiCorp is granted an extension, however, PacifiCorp will be forced to prepare potentially unnecessary responsive testimony now in order to be ready to file it by May 18. Similarly, PacifiCorp will incur potentially unnecessary expense if it is forced to review the boxes of exhibits that are not referenced in McCullough's testimony and attempt to respond to issues raised by those exhibits that Wah Chang has not yet raised before PacifiCorp knows whether those materials will remain in the record. Regardless of whether the Commission grants or denies the Motion to Strike, therefore, PacifiCorp will need at least 45 days after the Commission's ruling to finalize and file its reply testimony in order to avoid unnecessary expense and undue burden.

On the other hand, Wah Chang will suffer no prejudice if PacifiCorp's motion is granted. Although Wah Chang may argue that it will be prejudiced by any delay in the ultimate resolution of this matter, delay should not be considered prejudicial to Wah Chang because the filing of testimony has already been delayed by at least three months at Wah Chang's request. *See* Ruling dated August 18, 2005. A much shorter delay on the well reasoned grounds set forth by PacifiCorp should not be construed as prejudicial to Wah Chang. It has also been almost five years since the Commission issued its original ruling denying Wah Chang's claims and almost two years since the Commission reopened this docket for the consideration of "new" evidence. *See* Orders dated October 15, 2001 and May 27, 2004. It has been more than three and a half

years since the contract at issue expired on its own terms in September 2002. A minimal extension of time for PacifiCorp to file its testimony will not materially impact the total length of time it has taken and will take to reach a final resolution of this matter. In fact, if the Commission rules on the parties' pending motions in early May, PacifiCorp's reply testimony would be due in mid-June. Under these circumstances, the total additional time added as a result of this motion could potentially be only about 30 days—a third of the time added as a result of Wah Chang's request for an extension of time to file its direct testimony.


III. Conclusion

For the foregoing reasons, PacifiCorp's Motion should be granted, and PacifiCorp should be allowed to have 45 days after the Commission decides the parties' pending motions to finalize and file its reply testimony.

DATED: April 19, 2006.

PERKINS COIE LLP

By



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Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document, encaptioned PACIFICORP'S MOTION FOR EXTENSION OF TIME TO FILE REPLY TESTIMONY, by causing a copy to be sent via U.S. Mail and electronic mail to:

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DATED: April 19, 2006.

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