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October 17, 2005

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**VIA ELECTRONIC FILING**

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: Revised Motion of MEHC and PacifiCorp to Amend Protective Order  
Docket UM 1209**

Enclosed for filing please find the Revised Motion of MEHC and PacifiCorp to Amend Protective Order in the above-referenced docket. A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to be "KAM", written over a horizontal line.

Katherine A. McDowell

KAM:knp  
Enclosure  
cc: Service List

1 BEFORE THE PUBLIC UTILITY COMMISSION  
2 OF OREGON

3 UM 1209

4 In the Matter of the Application of  
5 MIDAMERICAN ENERGY HOLDINGS  
6 COMPANY for an Order Authorizing  
MEHC to Exercise Substantial Influence  
Over the Policies and Actions to PacifiCorp

**REVISED MOTION OF MEHC AND  
PACIFICORP TO AMEND  
PROTECTIVE ORDER**

7  
8 Pursuant to ORS 756.568 and OAR 860-013-0031, MidAmerican Energy Holdings  
9 Company (“MEHC”) and PacifiCorp (collectively, “Movants”) respectfully move the  
10 Commission to amend the Protective Order issued in this case under Order No. 05-867, in the  
11 manner described below, to allow for a “safe room” procedure for inspection of highly  
12 confidential discovery information. Movants make this proposal to permit discovery to  
13 proceed in this case without causing delay or unreasonable hardship on parties in the  
14 discovery process.

15 Movants filed the original version of this Motion last week and received constructive  
16 feedback on it from a number of parties. As a result, Movants have revised their Motion to,  
17 among other things, define the term “highly confidential” documents, remove the proposed  
18 treatment of “extremely confidential” documents from the scope of this motion, explain the  
19 flexible approach Movants intend to apply in conducting the case-by-case review of requests  
20 by parties for copies of “highly confidential” information, and provide a “best efforts” notice  
21 period for parties intending to use a highly confidential document as an exhibit in the case.

22 As good cause for this Revised Motion, Movants state:

23 1. On July 27, 2005, the Commission issued Order No. 05-867 (the “Order”),  
24 providing a Protective Order to govern the disclosure of confidential information in this case.  
25 In the Order, the Commission states that the Protective Order “permits the broadest possible  
26 discovery consistent with the need to protect confidential information.” Order at 1. The

1 Protective Order also recognizes in paragraph 16, Additional Protection, that there may be  
2 circumstances justifying levels of protection greater than those provided by the Protective  
3 Order. As reflected by the requirements of a motion seeking additional protection (*e.g.*,  
4 identification of the parties and persons involved, and the exact nature of the information  
5 involved), a motion for additional protection is typically filed regarding one, or a limited  
6 number of, data requests that have been served on the moving party.

7       2.       This case is filed under ORS 757.511, the same statute under which applicants  
8 in other cases regarding Portland General Electric Company (“PGE”) have recently sought  
9 approval of transfers in control. Events in parallel PGE cases have highlighted the need for  
10 alternative means of discovery with regard to highly confidential documents in this ORS  
11 757.511 case. Specifically, confidential documents that applicants produced under the  
12 protective order in UM 1121 were provided to the *Willamette Week*, which published  
13 information from those documents on January 5, 2005 (the “Tahoe documents”). In its  
14 March 10, 2005 Order in UM 1121, the Commission stated that it was disturbed and  
15 displeased with the unlawful violation of the protective order in that case, and that it intended  
16 to investigate the matter. Order No. 05-114 at 10. Movants understand that an Attorney  
17 General’s investigation of the violation of the protective order in UM 1121 remains pending.

18       3.       The documents for which Movants seek an alternative means of discovery are  
19 very limited and can generally be referred to as due diligence materials of MEHC and  
20 ScottishPower, including business plans, financial projections, board minutes, fairness  
21 opinion materials and tax information. The public disclosure of such due diligence materials  
22 would create a risk of substantial harm to the party to whom the discovery is directed. The  
23 highly confidential nature of these materials is underscored by the fact that, for the most part,  
24 they are not available for inspection by the respective counterparties to the proposed  
25 acquisition (*i.e.*, the due diligence of MEHC is confidential as to PacifiCorp and  
26 ScottishPower and the due diligence of ScottishPower is confidential as to MEHC).

1           4.       The “safe room” discovery mechanism which Movants propose for these  
2 documents would allow for review of the documents in the offices of Movants’ counsel, with  
3 the opportunity to take limited notes. Only Commission Staff and the Citizens’ Utility  
4 Board, being parties with statutory rights of intervention, would be allowed to make copies of  
5 the protected documents which would be subject to special handling instructions designed to  
6 maintain the highest levels of confidentiality.<sup>1</sup> Movants would address requests from other  
7 parties for limited copies to be used to develop testimony or exhibits to testimony on a case-  
8 by-case basis. Movants commit to respond to such requests with flexibility, working to get  
9 parties what they need while protecting Movants’ interests in maintaining the confidentiality  
10 of their most sensitive business information.

11           Movants are following similar procedures in other states where this transaction is  
12 pending, such as Idaho where the protective agreement allows for the following “safe room”  
13 approach for highly confidential documents:

14                   “Highly Confidential Documents. In the case of documents or  
15 information designated by a party as highly confidential, the  
16 providing party may decline to provide copies to counsel for  
17 other parties or to their employees, experts, agents or  
18 representatives. (The “highly confidential” designation is  
19 reserved for information the dissemination of which imposes a  
20 highly significant risk of competitive harm to the disclosing  
21 party with enhanced protections.) The providing party shall  
22 instead make such documents or information available for  
23 inspection and review by parties’ representatives who have  
24 executed an Exhibit “A” to this Protective Agreement at a  
place and time mutually agreed upon by the parties. The  
individuals reviewing the highly confidential information may  
make limited notes regarding such information for reference  
purposes only. Such notes shall not constitute a verbatim or  
substantive transcript of the highly confidential information.  
For purposes hereof, notes made pertaining to or as the result  
of review of highly confidential information shall be  
considered Confidential Information and subject to the terms of  
this Protective Agreement.” *(In the Matter of the Joint*

25           <sup>1</sup> In rare cases involving extremely confidential information, Movants wish to reserve  
26 the right to allow no copying at all; in such a situation, Movants will file a separate motion  
seeking additional protection for the specific documents under paragraph 16 of the Protective  
Order.

1                    *Application of MidAmerican and PacifiCorp*, Case No. PAC-  
2                    E-05-8, Idaho Protective Agreement).

3                    5.            Movants are very much aware of the need for adequate and appropriate  
4 discovery in this case, along with the need for discovery to continue without undue delay,  
5 and believe that the proposed method will accommodate Movants’ need for protection of  
6 highly confidential materials and other parties’ needs for discovery. Pending the  
7 investigation and resolution of the protective order violation in UM 1121, the Commission  
8 should take reasonable steps to prevent such an occurrence in this case.

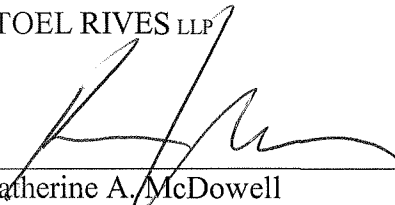
9                    6.            Specifically, Movants request that the Commission amend the Protective  
10 Order in this case by adding the following paragraph:

11                    Inspection of highly sensitive documents and information. As to highly sensitive  
12 documents and information, the parties shall have the right, at their option, to refuse  
13 to provide copies to the requesting party. The “highly confidential” designation is  
14 reserved for information the dissemination of which imposes a highly significant risk  
15 of competitive harm to the disclosing party, including but not limited to: financial  
16 projections, strategic business plans and tax information; due diligence on pending  
17 transactions, especially documents that remain confidential as between transaction  
18 counterparties; and Board minutes that reference highly confidential material. In such  
19 case, and as an alternative to seeking additional protection pursuant to paragraph 16,  
20 such documents shall be made available for inspection and review by qualified  
21 persons at a time and place mutually agreed upon by the parties; provided that for  
22 documents to be made available by MEHC or PacifiCorp to parties in the Portland  
23 area, the documents shall be available for review in the offices of their counsel, Stoel  
24 Rives LLP at 900 SW Fifth Ave., Portland, Oregon. Qualified persons reviewing  
25 such documents on behalf of the Commission Staff and Citizens’ Utility Board will  
26 be allowed to make copies of the protected documents, subject to special handling  
instructions designed to maintain the highest level of confidentiality for the  
documents. Requests by other parties for copies to be used to develop testimony or as  
exhibits to testimony will be addressed on a case-by-case basis. Parties who have  
copies of highly sensitive documents shall use best efforts to give MEHC and  
PacifiCorp 24 hours advance notice of their intent to use such a document as an  
exhibit in the case, so that MEHC and PacifiCorp can take reasonable steps to protect  
against disclosure of such documents. Where copies are not provided, the qualified  
person reviewing the Confidential Information may make limited notes regarding the  
Confidential Information for reference purposes only. Such notes shall not constitute  
a verbatim or substantive transcript of the Confidential Information. For purposes  
hereof, notes made pertaining to or as the result of a review of Confidential  
Information shall be considered Confidential Information and subject to the terms of  
this Protective Order. Disputes between the parties regarding the proper designation  
of highly sensitive information documents shall be resolved pursuant to Commission  
order pursuant to paragraph 15 of this Protective Order.

1 7. For the foregoing reasons, Movants request entry of an order amending the  
2 Protective Order in the manner set forth above.

3 DATED: October 17, 2005.

4 STOEL RIVES LLP

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Katherine A. McDowell

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing document in docket UM 1209 on the following named person(s) on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- Electronic mail

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

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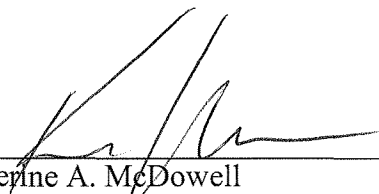
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