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October 12, 2005

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**VIA ELECTRONIC FILING**

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

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

Enclosed for filing please find the 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", with a long, sweeping horizontal line extending to the right.

Katherine A. McDowell

KAM:knp  
Enclosure  
cc: Service List

Oregon  
Washington  
California  
Utah  
Idaho

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1209

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

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

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

1. On July 27, 2005, the Commission issued Order No. 05-867 (the “Order”), providing a Protective Order to govern the disclosure of confidential information in this case. In the Order, the Commission states that the Protective Order “permits the broadest possible discovery consistent with the need to protect confidential information.” Order at 1. The Protective Order also recognizes in paragraph 16, Additional Protection, that there may be circumstances justifying levels of protection greater than those provided by the Protective Order. As reflected by the requirements of a motion seeking additional protection (*e.g.*, identification of the parties and persons involved, and the exact nature of the information involved), a motion for additional protection is typically filed regarding one, or a limited number of, data requests that have been served on the moving party.

2. This case is filed under ORS 757.511, the same statute under which applicants in other cases regarding Portland General Electric Company (“PGE”) have recently sought

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1 (UM 1121), and are currently seeking (UF 4218/UM1206), approval of transfers in control.  
2 Events in these parallel PGE cases have highlighted the need for alternative means of  
3 discovery with regard to highly confidential documents in this ORS 757.511 case.  
4 Specifically, confidential documents that applicants produced under the protective orders in  
5 UM 1121 and UF 4218/UM 1206 were provided to the *Willamette Week*, which published  
6 information from those documents on January 5, 2005 (the “Tahoe documents”) and  
7 September 14, 2005. The disclosure leading to the most recent publication of confidential  
8 information happened after the Commission’s March 10, 2005 Order No. 05-114, in which  
9 the Commission stated that it was disturbed and displeased with the unlawful violation of the  
10 protective order in that case, and that it intended to investigate the matter. Order No. 05-114  
11 at 10. Movants understand that an investigation of these violations of the protective order is  
12 now pending.

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

22 4. The “safe room” discovery mechanism which Movants propose for these  
23 documents would allow for review of the documents in the offices of Movants’ counsel, with  
24 the opportunity to take limited notes. Only Commission Staff and the Citizens’ Utility  
25 Board, being parties with statutory rights of intervention, would be allowed to make copies of  
26 the protected documents which would be subject to special handling instructions designed to

1 maintain the highest levels of confidentiality (in rare cases involving extremely confidential  
2 information, Movants wish to reserve the right to allow no copying at all). Movants would  
3 address requests from other parties for copies to be used as testimony exhibits on a case-by-  
4 case basis. Movants are following similar procedures in other states where this transaction is  
5 pending, such as Idaho where the protective agreement allows for the following “safe room”  
6 approach for highly confidential documents:

7           “Highly Confidential Documents. In the case of documents or  
8 information designated by a party as highly confidential, the  
9 providing party may decline to provide copies to counsel for  
10 other parties or to their employees, experts, agents or  
11 representatives. (The “highly confidential” designation is  
12 reserved for information the dissemination of which imposes a  
13 highly significant risk of competitive harm to the disclosing  
14 party with enhanced protections.) The providing party shall  
15 instead make such documents or information available for  
16 inspection and review by parties’ representatives who have  
17 executed an Exhibit “A” to this Protective Agreement at a  
18 place and time mutually agreed upon by the parties. The  
19 individuals reviewing the highly confidential information may  
20 make limited notes regarding such information for reference  
21 purposes only. Such notes shall not constitute a verbatim or  
22 substantive transcript of the highly confidential information.  
23 For purposes hereof, notes made pertaining to or as the result  
24 of review of highly confidential information shall be  
25 considered Confidential Information and subject to the terms of  
26 this Protective Agreement.” (*In the Matter of the Joint  
Application of MidAmerican and PacifiCorp*, Case No. PAC-  
E-05-8, Idaho Protective Agreement).

19           5.       Movants are very much aware of the need for adequate and appropriate  
20 discovery in this case, along with the need for discovery to continue without undue delay,  
21 and believe that the proposed method will accommodate Movants’ need for protection of  
22 highly confidential materials and other parties’ needs for discovery. Pending the  
23 investigation and resolution of the protective order violations in other ORS 757.511  
24 proceedings, the Commission should take reasonable steps to prevent such an occurrence in  
25 this case.

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

3           Inspection of highly sensitive documents and information. As to highly sensitive  
4 documents and information, the parties shall have the right, at their option, to refuse  
5 to provide copies to the requesting party. In such case, and as an alternative to  
6 seeking additional protection pursuant to paragraph 16, such documents shall be made  
7 available for inspection and review by qualified persons at a time and place mutually  
8 agreed upon by the parties; provided that for documents to be made available by  
9 MEHC or PacifiCorp to parties in the Portland area, the documents shall be available  
10 for review in the offices of their counsel, Stoel Rives LLP at 900 SW Fifth Ave.,  
11 Portland, Oregon. In general, qualified persons reviewing such documents on behalf  
12 of the Commission Staff and Citizens Utilities Board will be allowed to make copies  
13 of the protected documents, subject to special handling instructions designed to  
14 maintain the highest level of confidentiality for the documents. In cases involving  
15 extremely sensitive information, however, no copies shall be provided to any party.  
16 Requests by other parties for copies to be used as exhibits to testimony will be  
17 addressed on a case-by-case basis. Where copies are not provided, the qualified  
18 person reviewing the Confidential Information may make limited notes regarding the  
19 Confidential Information for reference purposes only. Such notes shall not constitute  
20 a verbatim or substantive transcript of the Confidential Information. For purposes  
21 hereof, notes made pertaining to or as the result of a review of Confidential  
22 Information shall be considered Confidential Information and subject to the terms of  
23 this Protective Order. Disputes between the parties regarding the proper designation  
24 of highly sensitive information documents or extremely sensitive information shall be  
25 resolved pursuant to Commission order pursuant to paragraph 15 of this Protective  
26 Order.

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

18           DATED: October 12, 2005.

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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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DATED: October 12, 2005.



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