

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS)	RULING
COMPANY)	
)	
Application for Authorization to Acquire)	
Pacific Power & Light, dba PacifiCorp.)	

DISPOSITION: MOTION GRANTED

On October 12, 2005, MidAmerican Energy Holdings Company (MEHC) and Pacific Power & Light, dba PacifiCorp (PacifiCorp) moved to amend the protective order. On October 17, 2005, MEHC and PacifiCorp filed a revised motion, proposing that the following paragraph be added to the protective order:

Inspection of Highly Sensitive Documents and Information.
As to highly sensitive documents and information, the parties shall have the right, at their option, to refuse to provide copies to the requesting party. The “highly confidential” designation is reserved for information the dissemination of which imposes a highly significant risk of competitive harm to the disclosing party, including but not limited to: financial projections, strategic business plans and tax information; due diligence on pending transactions, especially documents that remain confidential as between transaction counterparties; and Board minutes that reference highly confidential material. In such case, and as an alternative to seeking additional protection pursuant to paragraph 16, such documents shall be made available for inspection and review by qualified persons at a time and place mutually agreed upon by the parties; provided that for documents to be made available by MEHC or PacifiCorp to parties in the Portland area, the documents shall be available for review in the offices of their counsel, Stoel Rives LLP at 900 SW Fifth Ave., Portland, Oregon. Qualified persons reviewing such documents on behalf of

the Commission Staff and Citizens' Utility Board will 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.

In summary, MEHC and PacifiCorp requested that parties only be allowed to view highly confidential documents in a "safe room," and that they have "the opportunity to take limited notes." Commission Staff and the Citizens' Utility Board of Oregon would be allowed to make copies, with special restrictions, and other parties' requests to make copies would be addressed on a case by case basis.

Staff filed a response on October 24, 2005. Staff objected to being required to go to a safe room in Portland to inspect the documents. Because several members of Staff are working on the transaction at this time, it would necessitate extensive travel time and unreasonable hardship and delay. In addition, Staff expressed concern that other parties, with experts in other parts of the country may have trouble accessing the information they need.

On October 31, 2005, Staff withdrew its objection in light of its receipt of a letter from PacifiCorp, a copy of which is attached to this ruling as Appendix A. The letter essentially modifies MEHC's and PacifiCorp's proposed amendment to the protective order by exempting Staff from the requirement that highly confidential documents first be inspected in a "safe room" before copies are provided. With that amendment, Staff withdrew its objection, and believes that the exemption also applies to MEHC and ScottishPower documents.

As MEHC and PacifiCorp noted, the Commission is very concerned about disclosure of material subject to the protective order. *See* Order No. 05-114 at 10. The broad language in the added provision allowing MEHC and PacifiCorp “the right, at their option, to refuse to provide copies to the requesting party”, Motion at 4, is tempered by the very limited types of documents that MEHC and PacifiCorp assert are subject to heightened protection: “due diligence materials of MEHC and ScottishPower, including business plans, financial projections, board minutes, fairness opinion materials and tax information.” Motion at 2. In light of the accelerated schedule adopted in this docket, MEHC and PacifiCorp should carefully limit the use of their discretion in refusing copies. Parties retain the right to contest protection of specific materials. *See* Order No. 05-867, Appendix A at 4, § 15.

Further conflicts may arise; however, the parties have so far been able to reach agreement on discovery issues. Both the Industrial Customers of Northwest Utilities and now Staff have raised concerns about obtaining protected documents. In both cases, the parties resolved their concerns by working informally with MEHC and PacifiCorp. I encourage the parties to continue to initially work together to resolve their conflicts, and then to raise the issue in the docket through a motion to compel.

No party opposed MEHC’s and PacifiCorp’s request. The motion to amend the protective order is granted, and the proposed section regarding “Inspection of Highly Sensitive Documents and Information” is added as a supplement to the protective order.

Dated at Salem, Oregon, this 1st day of November, 2005.

Christina M. Smith
Administrative Law Judge