

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

PacifiCorp,

Petitioners

v.

Birchtech Corp,

Patent Owner

Case Nos.

IPR2025-00274

IPR2025-00278

IPR2025-00280

IPR2025-00281

IPR2025-00422

IPR2025-00423

IPR2025-00424

IPR2025-00425

Declaration of Jennifer A. McIvor

I. INTRODUCTION

1. My name is Jennifer A. McIvor, and I declare as follows:

2. I am a citizen of the United States and am over 18 years of age. I have personal knowledge of or, after having made reasonable inquiry, can attest to the following facts and, if called as a witness, I could competently testify to those facts.

3. I have been employed by Berkshire Hathaway Energy Company (“BHE”) since 2018. My current title is Senior Vice President, Chief Environment & Sustainability Officer.

4. BHE is an Iowa corporation with its principal place of business located in Iowa.

5. BHE owns, directly or indirectly, a portfolio of primarily regulated businesses that generate, transmit, store, distribute and supply energy and serve customers and end-users across geographically diverse service territories.

6. BHE is, and always has been, a holding company. BHE does not, and has never, owned or operated any power plants.

II. BHE’S RELATIONSHIP TO PACIFICORP AND MIDAMERICAN

7. PacifiCorp is incorporated under the laws of Oregon and operating with a principal place of business in Portland, Oregon. PacifiCorp is wholly owned by PPW Holdings LLC (“PPW”). PPW is a wholly owned subsidiary of BHE.

8. MidAmerican Energy Company (“MEC”) is incorporated under the laws of Iowa and operating with a principal place of business in Iowa. MEC is wholly owned by MHC Inc. MHC Inc. is wholly owned by MidAmerican Funding, LLC (“MidAmerican Funding”). MidAmerican Funding is a wholly owned subsidiary of BHE.

9. MidAmerican Funding and PPW must each represent themselves to the public as a legal entity separate from BHE, maintain their own separate books and records, financial statements, and bank accounts, not commingle their assets with BHE or any other entity, conduct their business in their own name, pay their own liabilities, pay their employees with their own funds, file their own taxes, and maintain their own office space.

10. MidAmerican Funding and PPW are each what is referred to as a “ring-fenced” entity, each with an independent director, meaning that each is designed to be financially separated from BHE, including for regulatory purposes. This is common in regulated industries and is designed to protect the entity providing vital services (e.g., a subsidiary providing electricity to consumers) by ensuring that any financial instability or bankruptcy in the parent company (in this instance, BHE) does not result in a subsidiary’s assets being brought into the bankruptcy estate.

11. BHE is a separate corporate entity from PacifiCorp and from MEC, and the companies observe—and have observed—corporate formalities at all times.

12. BHE does not hold itself out to be the agent of PacifiCorp or MEC, and MEC and PacifiCorp do not hold themselves out to be BHE's agents.

13. BHE does not control, direct, exercise supervision of, or intervene in, the day-to-day operations or affairs of PacifiCorp and MEC. BHE plays no role in the operation of PacifiCorp's and MEC's power plants.

III. THE COMPLAINTS FILED BY ME2C IN DELAWARE

14. On July 17, 2019, Midwest Energy Emissions Corporation ("ME2C") filed a complaint for patent infringement against several entities in the District of Delaware, case No. 1:19-cv-01334 ("Delaware Litigation"). **EX2003**. On July 15, 2020, ME2C filed its First Amended Complaint for Patent Infringement in the Delaware Litigation. **EX2023**.

15. Neither the Original Complaint nor the First Amended Complaint names as defendants (or mentions) BHE or any of its subsidiaries. **EX2003**, **EX2023**.

16. BHE did not, and does not, own or operate any of the power plants accused of infringement or mentioned in the complaints. **EX2003**, **EX2023**.

17. BHE did not direct, control, participate, or exercise any influence in the defense of the Delaware Litigation, nor did it have the opportunity to do so.

18. I have been informed that during the Delaware Litigation, several of the defendants filed petitions for *inter partes* review in 2020 against some of ME2C's

patents. BHE did not direct, control, or exercise any influence in preparation of the petitions in the 2020 IPR Proceedings, and BHE had no reason to do so.

IV. THE TALEN AND CHEM-MOD AGREEMENTS

19. On January 15, 2021, ME2C entered into an agreement with several Talen affiliates. **EX2052** (“Talen Agreement”).

20. None of the Talen affiliates negotiated the Talen Agreement on behalf of BHE.

21. BHE did not direct, control, or exercise any influence in negotiating the Talen Agreement.

22. BHE was unaware of the existence of the Talen Agreement until after BHE was sued by ME2C in the Southern District of Iowa in 2024.

23. I understand that ME2C has filed a sealed exhibit, **EX2053**, titled Settlement and License Agreement Between Midwest Energy Emissions Corp. and MES Inc., and Chem-Mod LLC, Arthur J. Gallagher & Co., AJG Coal, LLC, DTE Energy Co., and DTE Energy Resources, LLC, dated December 28, 2023 in these PTAB proceedings. **EX2053** (“Chem-Mod Agreement”).

24. BHE did not direct, control, or exercise any influence in the negotiations for the Chem-Mod Agreement.

25. BHE was unaware of the existence of the Chem-Mod Agreement at least until after BHE was sued by ME2C in the Southern District of Iowa in 2024.

V. **THE IOWA CASE AND SUBSEQUENT IPR PETITIONS**

26. On July 18, 2024, ME2C sued BHE for patent infringement in the Southern District of Iowa. **EX2007.**

27. BHE pursued petitions for IPR in IPR2025-00274 and -00278 (filed January 17, 2025), IPR2025-00280 and -00281 (filed January 24, 2025), and IPR2025-00422 and -00423 (filed February 11, 2025). Had ME2C not sued BHE in 2024, BHE would have had no need or interest in pursuing IPR petitions.

28. Other than Petitioners and the real-parties-in-interest identified in the petitions for the above proceedings, no other person or entity has directed, controlled, funded, or exercised any influence over BHE's decision to file the petitions (or the arguments included therein).

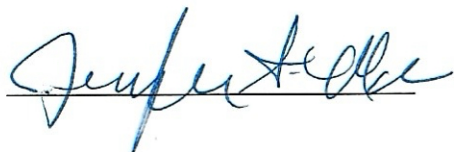
29. BHE has not asked any supplier or other entity to indemnify it from the patent infringement claims brought by ME2C.

30. On January 10, 2025, Judge Locher in the Southern District of Iowa granted a motion to dismiss that had been filed by BHE, dismissing BHE outright from the district court litigation. **EX1130.**

* * * *

31. I, Jennifer A. McIvor, do hereby declare and state, that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code. I declare under penalty of perjury that the foregoing is true and correct.

Executed this Feb. 19, 2016.

A handwritten signature in blue ink, appearing to read "Jennifer A. McIvor", written over a horizontal line.