

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

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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

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**DECLARATION OF BRAD RICHARDS**

**I. INTRODUCTION**

1. My name is Brad Richards, 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 PacifiCorp since 2008. My current title is Vice President of Thermal Generation.

4. PacifiCorp is an Oregon corporation, incorporated under the laws of Oregon and operating with a principal place of business located in Portland, Oregon.

**II. THE COLSTRIP POWER PLANT**

5. I have been asked to describe PacifiCorp's relationship with the Colstrip Steam Electric Station ("Colstrip plant").

6. The Colstrip plant is located in Montana. The Colstrip plant has included four coal-fired units. Units 1-2 each had a generating capacity of 307 MW (for a total of 614 MW). Units 3-4 each have 740 MW of generating capacity (for a total of 1480 MW). See **EX1146** (<https://www.colstripfacts.com/overview>).

7. Units 1-2 were retired in January 2020. **EX1113** (<https://www.colstripfacts.com/faqs>). Units 3-4 still burn coal as of today.

8. The Colstrip plant has historically had multiple co-owners:

- Puget Sound Energy (originally named Puget Sound Power & Light Co.)

- Talen Montana LLC (originally named Montana Power Company, and then PPL Montana, LLC)
- NorthWestern Energy
- Avista Corp. (previously The Washington Power Company)
- Portland General Electric Company
- PacifiCorp (formerly Pacific Power & Light Company)

The first five entities listed above (i.e., everyone other than PacifiCorp itself) are not affiliates of PacifiCorp.

9. Since before 2019 and continuing through today, Talen Montana LLC has been the entity responsible for operating Units 3-4 at Colstrip. Prior to Units 1-2 of Colstrip being decommissioned in January 2020, Talen Montana LLC was the entity responsible for operating those units as well. See **EX1113** (<https://www.colstripfacts.com/faqs>); **EX1147** (<https://www.talenenergy.com/plant/colstrip-steam-electric-station/>).

10. PacifiCorp has not been the entity responsible for operating any of the units at Colstrip.

11. Based on publicly available information, Talen Montana LLC is a wholly owned subsidiary of Talen Energy Corporation. **EX1147**. Talen Montana LLC is not an affiliate of PacifiCorp or an affiliate of Berkshire Hathaway Energy Company (BHE), PacifiCorp's parent company.

12. As of July 17, 2019 (and for several years before that), the ownership interest of the four units of Colstrip was as follows:

Company	Unit 1	Unit 2	Unit 3	Unit 4
Puget Sound Energy	50%	50%	25%	25%
Talen Montana LLC	50%	50%	30%	0%
NorthWestern Energy	0%	0%	0%	30%
Portland General Electric Co.	0%	0%	20%	20%
Avista Corp.	0%	0%	15%	15%
PacifiCorp	0%	0%	10%	10%
<b>Total Generation Capacity (MW)</b>	307	307	740	740

13. Effective January 2020, “Talen Montana, the operator of Colstrip, announced it had retired Units 1 & 2.” EX1113. The ownership interests in Units 3-4 did not change. Continuing to today, PacifiCorp owned 10% (148 MW) of Units 3-4.

### **III. THE COMPLAINTS FILED BY ME2C AGAINST TALEN ENTITIES**

14. Based on review of Exhibit 2003, 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 (“Original Complaint”).

15. Based on review of Exhibit 2023, on July 15, 2020, ME2C filed its First Amended Complaint for Patent Infringement in the Delaware Litigation. EX2023 (“FAC”).

16. In defining the “Defendants” to the case, the Original Complaint and FAC included “Talen” as a named defendant. Each document then further defined “Talen” as including “Talen Energy Corporation, Brandon Shores LLC, Talen Generation LLC, and H. A. Wagner LLC.” EX2003 at 2; EX2023 at 2. None of these entities are affiliates of PacifiCorp.

17. The Original Complaint and FAC accused “Talen’s Brandon Shores, Herbert Wagner, and Montour coal plants” of infringement. EX2003 ¶¶ 171, 174; EX2023 ¶¶ 229, 232. PacifiCorp did not have an ownership interest in these plants at the time the Original Complaint and FAC were filed, and to the best of my knowledge, PacifiCorp never had an ownership interest in any of these plants.

18. The Colstrip plant is not identified as an Accused Plant in the Original Complaint or FAC. Rather, the Original Complaint and FAC mention the Colstrip plant (as well as Brunner Island and Montour) as Talen plants that ME2C allegedly visited to discuss its technology. EX2003 ¶¶ 138, 141; EX2023 ¶¶ 175-182.

19. The Original Complaint and FAC do not mention PacifiCorp, Talen Montana LLC, or any of co-owners of the Colstrip plant. EX2003; EX2023.

20. Other than the Colstrip plant, to the best of my knowledge, PacifiCorp never had any ownership interest in any of the other power plants mentioned in the Original Complaint or FAC.

21. As discussed above, PacifiCorp had a 10% ownership interest in Units 3-4 (and a 0% ownership interest in Units 1-2) in the Colstrip plant, which has been and still is the smallest interest among the co-owners.

22. PacifiCorp did not direct, control, participate, or exercise any influence in the Delaware Litigation, nor did it have the opportunity to do so. For example, PacifiCorp did not receive infringement contentions, nor did it prepare or review invalidity or non-infringement contentions. PacifiCorp did not prepare or review any drafts of briefs that were filed in the Delaware Litigation.

#### **IV. THE 2020 IPR PROCEEDINGS**

23. I have been informed that Talen Energy Corporation, NRG Energy, Inc., and Vistra Energy Corp. filed four petitions for *inter partes* review (“IPR”) in 2020 against two of ME2C’s patents (collectively, “2020 IPR Proceedings”).

24. I have been informed that in filing its petitions, Talen Energy Corporation identified PacifiCorp as one of over one hundred “potential real parties-in-interest.”

25. PacifiCorp did not agree to be listed, or even know that it was listed, as a real party-in-interest in any of the 2020 IPR Proceedings.

26. PacifiCorp did not direct, control, participate, or exercise any influence in preparation of the petitions in the 2020 IPR Proceedings. Talen did not ask permission from PacifiCorp, or even inform PacifiCorp, prior to filing the petitions.

**V. SETTLEMENT AGREEMENTS (EX2052 AND 2053)**

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

28. None of the Talen affiliates negotiated the Talen Agreement on behalf of PacifiCorp.

29. PacifiCorp did not direct, control, participate, or exercise any influence in negotiating the Talen Agreement. PacifiCorp did not receive any drafts of the Talen Agreement or term sheets prior to it being signed.

30. PacifiCorp did not direct, control, or exercise any influence on the terms of the Talen Agreement or the final payout from the Talen affiliates to ME2C, nor did PacifiCorp have the ability to do so because: (a) PacifiCorp was not named as a defendant in the Delaware Litigation; (b) PacifiCorp’s affiliates were not named as defendants in the Delaware Litigation; (c) none of the co-owners of the Colstrip plant (including Talen Montana LLC) were named as defendants in the Delaware Litigation; (d) other than Colstrip, none of the power plants mentioned in the Original Complaint and FAC were owned (in part or in whole) by PacifiCorp or by PacifiCorp’s affiliates; and (e) even considering the Colstrip plant, PacifiCorp had the smallest ownership interest among the co-owners of the Colstrip plant (10% of Units 3-4 and 0% of Units 1-2).

31. I have been informed that ME2C has filed a sealed exhibit, purportedly 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. **EX2053** (“Chem-Mod Agreement”).

32. PacifiCorp did not direct, control, participate, or exercise any influence in negotiating the Chem-Mod Agreement. PacifiCorp was not aware of the existence of the Chem-Mod Agreement at least until after PacifiCorp filed the petitions for IPR in 2025. As Exhibit 2053 is filed under seal, I have not reviewed a copy of it.

#### **VI. THE IOWA CASE AND SUBSEQUENT IPR PETITIONS**

33. On July 18, 2024, ME2C sued PacifiCorp for patent infringement in the Southern District of Iowa (“Iowa Litigation”). **EX2007**.

34. PacifiCorp then decided to pursue petitions for IPR. Co-petitioners included MidAmerican Energy Company, BHE, Interstate Power & Light Company, WEC Energy Group, Inc., and Wisconsin Power & Light Company.

35. Other than the co-petitioners, no other person or entity has directed, controlled, funded, or exercised any influence over PacifiCorp’s decision to file the petitions (or the arguments included therein).

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

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37. I, Brad Richards, 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 27<sup>th</sup> day of February 2026.



Brad Richards