UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BERKSHIRE HATHAWAY ENERGY COMPANY &
PACIFICORP,

Petitioners

v.

BIRCHTECH CORP.
(d/b/a MIDWEST ENERGY EMISSIONS CORP.)

Patent Owner

Case IPR2025-00423
Patent 10,668,430

JOINT MOTION TO EXPUNGE CONFIDENTIAL INFORMATION FROM THE RECORD

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I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.56, Patent Owner and Petitioners respectfully file this Joint Motion to Expunge confidential documents filed under seal in this proceeding. In particular, the parties request that the Board expunge the following documents that were submitted under seal in this proceeding:

- Confidential Exhibits 1151, 1153-1159, 2011 (Part 1 and Part 2), 2017 (Part 1 and Part 2), 2037-2042, 2050-2053, 2059-2062
- Papers 19, 24, 57, 71, 73

A. Exhibit 1151

Exhibit 1151 is the Deposition Transcript of Jim Trettel, March 6, 2026. During Mr. Trettel's deposition, counsel for Patent Owner designated the transcript confidential under the IPR protective order. The deposition of Mr. Trettel discussed confidential agreements, including with Talen (EX2052), Chem-Mod (EX2053), and others. Patent Owner filed EX2052 and EX2053 under seal during this proceeding

B. Exhibit 1153

Exhibit 1153 is a letter from PacifiCorp's outside counsel to ME2C's counsel, dated September 30, 2024, that relates to terms of the Talen Agreement (EX2052).

C. Exhibit 1154

Exhibit 1154 is a response letter from ME2C's counsel to PacifiCorp's counsel, dated October 14, 2024, and discussing the terms of the Talen Agreement.

D. Exhibit 1155

Exhibit 1155 is an email between counsel for ME2C and counsel for MidAmerican, dated April 2, 2025, and discussing terms of the Chem-Mod Agreement (EX2053).

E. Exhibit 1156

Exhibit 1156 is PacifiCorp's Motion for Judgment on the Pleadings from In re: Midwest Energy Emissions Corp. Patent Litig., No. 4:24-MD-03132-SHLWPK, ECF 190 (S.D. Iowa September 10, 2025). The document was filed under seal in Iowa, as it discusses terms of the Talen Agreement.

F. Exhibit 1157 [corresponding to previously filed EX2009]

Exhibit 1157 is MidAmerican Energy Company's Amended Answer from In re: Midwest Energy Emissions Corp. Patent Litig., No. 4:24-MD-03132-SHL-WPK, ECF 84 (S.D. Iowa March 21, 2025). The document was filed under seal in Iowa. Petitioner's counsel has received permission from MidAmerican's district court counsel to file EX1157 with this proceeding, but only if it is maintained under seal.

G. Exhibit 1158 [corresponding to previously filed EX2010]

Exhibit 1158 is Wisconsin Power and Light Company's Amended Answer from In re: Midwest Energy Emissions Corp. Patent Litig., No. 4:24-MD-03132-SHL-WPK, ECF 85 (S.D. Iowa March 21, 2025). The document was filed under seal in Iowa. Petitioner's counsel has received permission from WPL's district court counsel to file EX1158 with this proceeding, but only if it is maintained under seal.

H. Exhibit 1159

Exhibit 1159 is MidAmerican's Motion for Partial Judgment on the Pleadings In re: Midwest Energy Emissions Corp. Patent Litig., No. 4:24-MD03132-SHL-WPK, ECF 195 (S.D. Iowa Sept. 11, 2025). The document was filed under seal in Iowa. Petitioner's counsel has received permission from MidAmerican's district court counsel to file EX1159 with this proceeding, but only if it is maintained under seal.

I. Exhibit 2011 (Part 1 and Part 2)

Exhibit 2011 is the Expert Report of Dr. Stephen Niksa, dated October 25, 2022, from Midwest Energy Emissions Corp., et al. v. Arthur J. Gallagher & Co., et al., C.A. 1:19-cv-01334 (D. Del.), which was designated "CONFIDENTIAL" by the defendants in that case.

J. Exhibit 2017 (Part 1 and Part 2)

Exhibit 2017 contains details regarding confidential processes maintained by a third party—the Energy & Environmental Research Center ("EERC"). In particular, the document contains information regarding the EERC's use of and operating procedures for its Pilot Test Combustor, which it generally maintains as confidential to protect its research initiatives and the confidentiality of information from entities that work with the EERC.

K. Exhibits 2037-2042

Exhibits 2037–42 are certain initial Petitioners' agreements with refined coal suppliers, which were produced by initial Petitioners to Patent Owner and designated by initial Petitioners as "Restricted – Attorneys' Eyes Only."

L. Exhibits 2050 and 2051

Exhibits 2050 and 2051 are Petitioner PacifiCorp's First and Second Amended Answer, Affirmative Defenses, and Counterclaims in Response to Plaintiff's First Amended Complaint for Patent Infringement from In re: Midwest Energy Emissions Corp. Pat. Litig., No. 4:24-md-03132-SHL-WPK (S.D. Iowa), which were each filed under seal by Petitioner PacifiCorp in that case.

M. Exhibit 2052

Exhibit 2052 is the License Agreement Between Brandon Shores LLC, Talen Generation LLC, Talen Montana, LLC, and H.A. Wagner LLC, and

Midwest Energy Emissions Corp. and MES Inc., dated Jan. 15, 2021, which contains confidential information of Patent Owner and third parties, and was filed under seal and designated as "Restricted – Attorneys' Eyes Only" in In re: Midwest Energy Emissions Corp. Pat. Litig., No. 4:24-md-03132-SHL-WPK (S.D. Iowa).

N. Exhibit 2053

Exhibit 2053 is the 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, which is a confidential document produced in In re: Midwest Energy Emissions Corp. Pat. Litig., No. 4:24-md-03132-SHL-WPK (S.D. Iowa), designated as "Restricted – Attorneys' Eyes Only."

O. Exhibits 2059, 2061, 2062

Exhibits 2059, 2061, and 2062 are the deposition transcripts of Jennifer McIvor, David Cabello, and Brad Richards and designated as Confidential and/or Protective Order Material.

P. Exhibit 2060

Exhibit 2060 is the Ownership and Operation Agreement of Colstrip Units #3 & #4, dated May 6, 1981, which is a confidential document produced by Petitioners, designated as "Restricted—Attorneys' Eyes Only."

Q. Papers 19, 24, 57, 71, 73

These Papers contains quotations or references to the above exhibits that may be deemed confidential for the same reasons explained above.

II. GOOD CAUSES EXISTS TO EXPUNGE

A party seeking expungement from the record must show good cause by demonstrating "that any information sought to be expunged constitutes confidential information, and that Petitioner's interest in expunging it outweighs the public's interest in maintaining a complete and understandable history of this inter partes review." *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. Apr. 15, 2015).

As described above and in the parties' motions to seal (Papers 15, 18, 23, 56, 70, 74), the documents include the parties' and third parties' confidential information and sensitive business information regarding business relationships, confidential agreements and could cause competitive business injury to the involved parties and third parties.

A public version of Exhibit 2011 is already filed on the docket, so the public's interest is not affected by expunging the sealed version of Exhibit 2011.

For Exhibit 2017, the first Institution Decision, Paper 35, makes no reference to Exhibit 2017. The second Institution Decision, Paper 76, makes no reference to Exhibit 2017. Therefore, the public would be able to understand the

Board's decisions and the record without referencing Exhibit 2017.

The remaining exhibits pertain to the real-parties-in-interest analysis of the parties and Board. As such, they do not go the patentability of the challenged claims. Therefore, expunging these exhibits would not impact the public's understanding of the record as to the substantive merits. Furthermore, these exhibits contain confidential and sensitive business information that would create competitive injury to the parties and third parties were it made public.

THEREFORE, Patent Owner and Petitioners respectfully request that the Board expunge the confidential documents.

Dated: August 12, 2026

Respectfully submitted,

Birchtech Corp.

/Hamad M. Hamad/

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)(4)

It is hereby certified that on this 12th day of August, 2026, a copy of the foregoing document was served via electronic mail, as consented to by Petitioner upon the following counsel of record:

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