IN THE COURT OF APPEALS OF THE STATE OF OREGON

JEANYNE JAMES, et al.,

Plaintiffs-Respondents, Cross-Appellants,

and

MARY KATHLEEN BECHERER, et al.,

Plaintiffs

and

OREGON DEPARTMENT OF JUSTICE,

Creditor-Respondent,

vs.

PACIFICORP, an Oregon corporation, and PACIFIC POWER, an Oregon registered electric utility and assumed business name of PacifiCorp,

Defendants-Appellants, Cross-Respondents.

Multnomah County Circuit Court
Case No. 20CV33885

CA A183140

EDISON ELECTRIC INSTITUTE'S AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS PACIFICORP AND PACIFIC POWER

Appeal from Limited Judgment of the Circuit Court for Multnomah County
The Honorable Steffan Alexander

Counsel Listed on Next Page

April 2025

Keith A. Ketterling, OSB No. 913368
Timothy S. DeJong, OSB No. 940662
Cody Berne, OSB No. 142797
Emily A. Johnson, OSB No. 183791
Erin E. Roycroft, OSB No. 184371
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 SW Oak Street, Suite 500
Portland, Oregon 97204
(503) 227-1600
kketterling@stollberne.com
tdejong@stollberne.com
cberne@stollberne.com
ejohnson@stollberne.com
eroycroft@stollberne.com

Counsel for Plaintiffs-Respondents

Matthew J. Preusch, OSB No. 134610
KELLER ROHRBACK LLP
1129 State Street, Suite 8
Santa Barbara, California 93101
(805) 456-1496
mpreusch@kellerrohrback.com

Counsel for Plaintiffs-Respondents

Nicholas A. Kahl, OSB No. 101145
NICK KAHL, LLC
209 SW Oak St., Suite 400
Portland, Oregon 97204
(971) 231-1342
nick@nickkahl.com

Counsel for Plaintiffs-Respondents

Yoona Park, OSB No. 980904
Sarah R. Osborn, OSB No. 222119
KELLER ROHRBACK LLP
805 SW Broadway, Suite 2750
Portland, Oregon 97205
(971) 253-4600
ypark@kellerrohrback.com
sosborn@kellerrohrback.com

Counsel for Plaintiffs-Respondents

Rafey S. Balabanian
Brandt Silver-Korn
Todd Logan
EDELSON PC
150 California Street, 18th Floor
San Francisco, CA 94111
(415) 212-9300
rbalabanian@edelson.com
bsilverkorn@edelson.com
tlogan@edelson.com

Counsel for Plaintiffs-Respondents

Daniel Mensher, OSB No. 074636
Natida Sribhibhadh
KELLER ROHRBACK LLP
1201 Third Avenue, Suite 3200
Seattle, Washington 98101
(206) 623-1900
dmensher@kellerrohrback.com
mpreusch@kellerrohrback.com
natidas@kellerrohrback.com

Counsel for Plaintiffs-Respondents

Derek C. Johnson, OSB No. 882340
Marilyn A. Heiken, OSB No. 923308
JOHNSON JOHNSON LUCAS & MIDDLETON, PC
975 Oak Street, Suite 1050
Eugene, Oregon 97401
(541) 484-2434
djohnson@justicelawyers.com
mheiken@justicelawyers.com

Counsel for Plaintiffs-Respondents

Nicholas Rosinia
Amy Hausmann
Zoe Seaman-Grant
Landon Webster
Megan Delurey
Alexander Glenn Tievsky, *pro hac vice*
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
(312) 589-6370
nrosinia@edelson.com
abhausmann@edelson.com
zseaman-grant@edelson.com
lwebster@edelson.com
mdelurey@edelson.com
atievsky@edelson.com

Counsel for Plaintiffs-Respondents

Per A. Ramfjord, OSB No. 934024
Brad S. Daniels, OSB No. 025178
Reilley D. Keating, OSB No. 073762
STOEL RIVES LLP
760 S.W. 9th Ave., Suite 3000
Portland, Oregon 97205
(503) 224-3380
per.ramfjord@stoel.com
brad.daniels@stoel.com
reilley.keating@stoel.com

Counsel for Defendants-Appellants

Denise Fjordbeck, OSB No. 822578
Senior Assistant Attorney General
OREGON DEPARTMENT OF JUSTICE
400 Justice Building
1162 Court St., NE
Salem, Oregon 97301-4096
(503) 378-4402
denise.fjordbeck@doj.oregon.gov

Counsel for Creditor-Respondent

Alison L. Plessman
Rajan S. Trehan
Stephanie W. Xiao
Khoa D. Nguyen
HUESTON HENNIGAN LLP
523 West 6th Street, Suite 400
Los Angeles, California 90014
(213) 788-4340
aplessman@hueston.com
rajan.trehan@hueston.com
sxiao@hueston.com
knguyen@hueston.com

Counsel for Defendants-Appellants

Blaine H. Evanson, *pro hac vice*
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, California 92612
(949) 451-3800
bevanson@gibsondunn.com

Counsel for Defendants-Appellants

Douglas J. Dixon
Craig A. Fligor
HUESTON HENNIGAN LLP
620 Newport Center Dr., Suite 1300
Newport Beach, California 92660
(949) 229-6840
ddixon@hueston.com
cfligor@hueston.com

Counsel for Defendants-Appellants

J. Aaron Landau, OSB #094135
HARRANG LONG P.C.
800 Willamette Street, Suite 770
Eugene, OR 97401-2991
(541) 485-0220
aaron.landau@harrang.com

Counsel for Amicus Curiae *Edison Electric Institute*

Jeremy C. Marwell, *pro hac vice forthcoming*
VINSON & ELKINS LLP
2200 Pennsylvania Avenue, NW
Suite 500 West
Washington, DC 20037
(202) 639-6507
jmarwell@velaw.com

Counsel for Amicus Curiae *Edison Electric Institute*

TABLE OF CONTENTS

Page

IDENTITY AND INTEREST OF AMICUS CURIAE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 2

ARGUMENT 7

I. THE REGULATORY COMPACT BETWEEN AN INVESTOR-OWENED ELECTRIC COMPANY AND ITS REGULATOR IS FUNDAMENTAL TO DELIVERING RELIABLE AND AFFORDABLE ELECTRIC SERVICE TO CUSTOMERS 7

II. UNPREDICTABLE AND EFFECTIVELY UNCAPPED AND UNAVOIDABLE LIABILITITES THREATEN THE REGULATORY COMPACT AND ULTIMATELY THE FINANCIAL STABILITY OF INVESTOR-OWNED ELECTRIC COMPANIES. 15

A. Significant civil monetary liabilities, imposed without regard to fault or causation, place strain on an investor-owned electric company's ability to raise and deploy necessary capital in service of customers. 15

B. Recent wildfire litigation has produced downstream consequences that threaten the regulatory compact's careful balance, to the detriment of electric companies and customers alike. 20

III. THE CIRCUIT COURT'S DECISIONS MINIMIZE OR ELIMINATE ESSENTIAL CLASS-ACTION AND SUBSTANTIVE GUARDRAILS, EXPOSING PACIFICORP TO EXCESSIVE CIVIL LIABILITIES, WHICH RUNS CONTRARY TO KEY TENETS OF THE REGULATORY COMPACT. 25

CONCLUSION 32

TABLE OF AUTHORITIES

Cases **Page(s)**

In re Bastrop Cnty. Complex Fire Litig.,
No. 2012-MCF-01, 2015 WL 13631338 (Tex. Dist. Ct. Mar. 03, 2015) 29

Bellermann v. Fitchburg Gas & Elec. Light Co.,
470 Mass 43, 18 NE3d 1050 (Mass. 2014) 29

Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.,
262 US 679, 43 S Ct 675, 67 L Ed 1176 (1923) 12, 13

Cole v. Pacific Tel. & Tel. Co.,
112 Cal App 2d 416, 246 P2d 686 (Cal. Dist. Ct. App. 1952) 18

Downing v. San Diego Gas & Elec. Co.,
2010 WL 4233033 (Cal. Ct. App. Oct. 27, 2010) (unpublished) 28

Entergy Gulf States, Inc. v. Butler,
25 SW3d 359 (Tex. App. 2000) 30

Fed. Power Comm'n v. Hope Nat. Gas Co.,
320 US 591, 64 S Ct 281, 88 L Ed 333 (1944) 12, 13

Garrison v. Pac. Nw. Bell,
45 Or App 523, 608 P2d 1206 (1980) 17

Gearhart v. PUC,
255 Or App 58, 299 P3d 533 (2013), *aff'd, Gearhart II,* 356 Or 216 10

Gearhart v. PUC,
356 Or 216, 339 P3d 904 (2014) 8, 9, 11

Hammond Lumber Co. v. Pub. Serv. Comm'n,
96 Or 595, 189 P 639 (1920) 11

Houston Lighting & Power Co. v. Auchan USA, Inc.,
995 SW2d 668 (Tex. 1999) 18

Jersey Cent. Power & Light Co. v. Fed. Energy Regul. Comm'n,
810 F2d 1168 (DC Cir 1987) (Starr, J., concurring) 10

Muise v. GPU, Inc.,
371 NJ Super 13, 851 A2d 799 (N.J. Super. Ct. App. Div. 2004) 30

Munn v. Illinois,
94 US 113, 24 L Ed 77 (1876) 11

Pac. Nw. Bell Tel. Co. v. Eachus,
135 Or App 41, 898 P2d 774 (1995) 18

Pearson v. Philip Morris, Inc.,
358 Or. 88, 361 P3d 3 (2015) 28

S. Bell Tel. & Tel. Co. v. Invenchek, Inc.,
130 Ga App 798, 204 SE2d 457 (Ga. Ct. App. 1974) 18

Smyth v. Ames,
169 US 466, 18 S Ct 418, 42 L Ed 819 (1898) 11

Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm'n of Mo.,
262 US 276, 308, 43 S Ct 544, 67 L Ed 981 (1923) 14

Tegnazian v. Consol. Edison, Inc.,
730 NYS2d 183, 189 Misc 2d 152 (N.Y. Sup. Ct. 2000) 30

Statutes

ORS 756.040(1) 8, 10

ORS 756.040(1)(b) 12, 18

ORS 757.020 22

ORS 757.225 18

ORS 757.310(2) 10

Other Authorities

Arthur Abal et al., Nat'l Ass'n of Regul. Util. Comm'rs, *Primer on Rate Design for Cost-Reflective Tariffs* 12-13 (2021), https://perma.cc/GZ7V-DLSD 16

Byron G. Stier, *Jackpot Justice: Verdict Variability and the Mass Tort Class Action,* 80 Temp L Rev 1013, 1014-16, 1018-20 (2007) 31

Chris Dunn & Andy McEvoy, Or. State Univ., *Technical Guide: Mapping Wildfire Hazard and the Wildland-Urban Interface to Support Implementation of Oregon's 2023 Senate Bill 80* (2025), https://perma.cc/BQA9-UAP6 23

Edison Elec. Inst., *America's Electric Companies: Delivering the Future of Energy: Electric Power Industry Outlook* 2 (2024), https://perma.cc/4TCQ-BJC6 12

Edison Elec. Inst., *Issues & Policy: Wildfire Mitigation & Liability,* https://perma.cc/9FVU-EQWT 25

Emma Penrod, *Nearly 100 Utilities' Credit Rating Downgraded Since 2020 as Wildfire Risks Grow,* Utility Dive (Oct. 23, 2024), https://perma.cc/MUW5-PS8U 20

J. Gregory Sidak & Daniel F. Spulber, *Deregulatory Takings and Breach of the Regulatory Contract,* 71 NYU L Rev 851, 881-82 (1996) 11

James C. Bonbright, *Principles of Public Utility Rates* 48-81 (1961) 9

Jennifer K. Balch et al., *Human-Started Wildfires Expand the Fire Niche Across the United States,* 114 Proc. of Nat'l Acad. of Scis. 2946, 2948-50 (2017), https://www.pnas.org/doi/epdf/10.1073/pnas.1617394114 23

John Quakenbush, Nat'l Ass'n of Regul. Util. Comm'rs, *A Cost of Capital and Capital Markets Primer for Utility Regulators* 9 (2020), https://perma.cc/G3AX-3T6J 13

John T. Abatzoglou & A. Park Williams, *Impact of Anthropogenic Climate Change on Wildfire Across Western US Forests,* 113 Proc. of Nat'l Acad. of Scis. 11,770, 11,773 (2016), https://www.pnas.org/doi/epdf/10.1073/pnas.1607171113 24

Kyle M. Loughlin & Daria Babitsch, *Wildfire-Exposed U.S. Investor-Owned Utilities Face Increasing Credit Risk Without Comprehensive Solutions,* S&P Global (Nov. 6, 2024), https://www.spglobal.com/ratings/en/research/articles/241106-wildfire-exposed-u-s-investor-owned-utilities-face-increasing-credit-risks-without-comprehensive-solutions-13297812 21

Mark Chediak, *Wildfire Threats Make Utilities Uninsurable in U.S. West,* Bloomberg (June 24, 2024), https://perma.cc/MTA8-FA4J 22

ORCP 32(B)(3) 28

Order Denying Rehearing of Decision (D.) 17-11-033, Decision No. 18-07-025, at 3-4, (Cal. Pub. Utils. Comm'n July 12, 2018), https://perma.cc/PDE3-CKMP 15

In re Portland Gen. Elec. Co., PUC Order No. 03-024, at 3 (Jan. 13, 2003) 14, 21

In re Portland Gen. Elec. Co., PUC Order No. 08-487, at 6-7 & n31 (Sept. 30, 2008) 9, 12, 13, 18

Reynolds v. Juniper Util. Co., PUC Order No. 01-827, 2001 WL 34001633 (Sept. 25, 2001) 22

Roger B. Hammer et al., *Wildland-Urban Interface Housing Growth During the 1990s in California, Oregon, and Washington,* 16 Int'l J. of Wildland Fire 255, 261-64 (2007) 23

Stijn Hantson et al., *Human-Ignited Fires Result in More Extreme Fire Behavior and Ecosystem Impacts,* 13 Nature Commc'ns 2717, at 4-6 (2022), https://perma.cc/DB6H-NS4P 23

U.S. Dep't of Energy, *Transforming the Nation's Electricity System: The Second Installment of the Quadrennial Energy Review* A-28 (2017), https://perma.cc/JK4Z-PWE2 7

U.S. Energy Info. Admin., *Electric Power Monthly: Average Price of Electricity to Ultimate Customers,* Table 5.3 (Jan. 24, 2025), https://perma.cc/4U9S-RHZH 16, 17

U.S. Glob. Change Rsch. Program, *Fifth National Climate Assessment: Focus on Western Wildfires,* at F2-5 to F2-6 (2023), https://perma.cc/7M58-RMKY 24

IDENTITY AND INTEREST OF AMICUS CURIAE

The Edison Electric Institute ("EEI") is the trade association that represents all investor-owned electric companies in the United States. EEI's members, which include Defendants-Appellants PacifiCorp and Pacific Power (collectively, "PacifiCorp"), provide electricity to nearly 250 million Americans and operate in all 50 states and the District of Columbia. Organized in 1933, EEI works to promote the long-term success of the electric power industry in its vital mission to provide reliable, cost-efficient, and clean electricity to customers nationwide. Such electric service is necessary, among other things, to foster economic progress and improve quality of life. The electric power industry supports more than 7 million jobs in communities across the United States and contributes $880 billion to the U.S. economy through direct employment, contracts and supply chain, and investments, as well as through the jobs and investments that are induced by these activities. EEI routinely files *amicus curiae* briefs in federal and state court cases, like this one, that raise issues of interest and importance to the electric power industry.

INTRODUCTION AND SUMMARY OF ARGUMENT

EEI has a substantial interest in the proper application of legal doctrines governing the liability of regulated investor-owned electric companies, including the law related to class actions, tort-based and other theories of liability, and damages. This case is not the first action seeking to hold an investor-owned electric company liable for wildfire-related damages under the types of legal theories advanced by plaintiffs, and unfortunately it is unlikely to be the last. The issues raised by PacifiCorp on appeal, and this court's resolution of the same, are relevant well beyond Oregon's borders; other jurisdictions are already (or soon will be) grappling with similar wildfire litigation and may well look to this court for guidance.

In the decisions below, the circuit court departed from fundamental class-action and merits principles in numerous respects, including by improperly certifying plaintiffs' class despite the reality that individualized inquiries on issues of liability, causation, and damages predominate in the matter; by failing to require plaintiffs to prove a chain of causation from any PacifiCorp-ignited fire to actual effects upon their properties; and by permitting plaintiffs to recover vast amounts of noneconomic damages, contrary

to Oregon precedent holding that unintended damage to real or personal property cannot be the basis for noneconomic damages. These errors, if affirmed and carried forward, risk subjecting PacifiCorp to potentially billions of dollars in aggregate damages in connection with this one wildfire incident alone. *See* PacifiCorp Br. 4.

EEI files this *amicus curiae* brief not to duplicate PacifiCorp's legal and doctrinal arguments, but rather to highlight the broader economic and policy context in which this case arises, and the threat that the circuit court's judgment here poses to the ratemaking and economic principles governing regulated investor-owned electric companies and utilities in other sectors. In particular, EEI will explain how the circuit court's decisions regarding class certification, causation, and noneconomic damages will distort and undermine the delicate relationships and balance among and between an investor-owned electric company, its state regulator, customers, investors and creditors, and other stakeholders—often described colloquially as the "regulatory compact."

The regulatory compact, a concept recognized by Oregon law and other jurisdictions nationwide, consists of a set of principles and legal rules that balance the interests of investor-owned utilities and

their customers by regulating the terms and rates charged for service, in exchange for the obligation to serve all customers in a particular service area. This compact serves the shared interests of regulators, investor-owned utilities, and their customers and stakeholders by ensuring that utilities can consistently and efficiently provide reliable and affordable service over the long term, while recovering prudently incurred costs and receiving a reasonable return of and on invested capital. As a matter of basic economics and black-letter doctrine, those principles are critical for investor-owned electric companies to attract the enormous amounts of private capital investment necessary to build, operate, maintain, and improve the infrastructure and other systems necessary for the reliable and safe delivery of electric power—including investments needed to harden such systems to reduce and respond to wildfire risks. *See infra* Part I.

The regulatory compact, however, breaks down where tort liability subjects an investor-owned electric company to unpredictable and enormous civil monetary liabilities, including the billions of dollars potentially at issue in this case. Massive civil liabilities, including those imposed without regard to traditional

limiting principles related to fault, causation, and noneconomic damages, threaten the financial stability of investor-owned electric companies. They divert funds away from system maintenance and improvements and raise the company's risk profile, ultimately increasing the costs of raising private capital. Further downstream, massive civil liabilities will directly and indirectly harm customers through more expensive or less reliable electric service. *See infra* Part II.A.

These concerns are perhaps most acute in the context of wildfire-related litigation, which involves massive, enterprise-threatening damages amounts resulting from a complex matrix of phenomena largely outside of any company's control, and which has placed increasing strain on electric companies' ability to raise capital, procure insurance, maintain and improve service, and in some instances continue as going concerns. Moreover, it is unlikely that the specter of wildfire litigation will simply go away given the ongoing effects of climate change, population shifts, development pressures, trends in insurance markets, and forest management practices, all happening against the backdrop of investor-owned electric companies' legal obligations to serve all customers within

their service areas, even those customers who choose to locate in areas of high wildfire risk. *See infra* Part II.B.

In many respects, this case is a poster child for EEI's broader concerns: The circuit court loosened or eliminated several doctrinal guardrails that typically protect defendants against unpredictable and unwarranted mass-tort liability, as persuasively demonstrated by PacifiCorp in its brief. In the process, the circuit court effectively made PacifiCorp an "insurer of last resort" for the wide-ranging damages arising from the Labor Day 2020 wildfires, regardless of PacifiCorp's actual fault and without any demonstration that PacifiCorp's actions damaged a particular property. Such an approach threatens the regulatory compact, to the detriment of not only investor-owned electric companies but also their customers, who ultimately face higher rates and/or diminished service as companies and state regulators struggle to account for the kinds of massive liabilities at issue here. *See infra* Part III.

/ / /

/ / /

/ / /

ARGUMENT

I. THE REGULATORY COMPACT BETWEEN AN INVESTOR-OWNED ELECTRIC COMPANY AND ITS REGULATOR IS FUNDAMENTAL TO DELIVERING RELIABLE AND AFFORDABLE ELECTRIC SERVICE TO CUSTOMERS.

Most electricity customers in the United States are served by investor-owned electric companies. *See* U.S. Dep't of Energy, *Transforming the Nation's Electricity System: The Second Installment of the Quadrennial Energy Review* A-28 (2017), https://perma.cc/JK4Z-PWE2.[1] Investor-owned electric companies, like PacifiCorp, are privately owned, for-profit enterprises whose retail services, including defined service territories and the rates charged customers, are closely regulated by state public utilities commissions. *Id.* at A-29. An electric company's rate structure, and the associated terms and conditions, are generally reviewed and approved by the relevant state regulator and set forth in a published legal instrument called a tariff.

---

[1] Perma.cc is a service developed and maintained by the Havard University Library for the purpose of enabling citation to online sources through "forever" hyperlinks, The service is used in this brief to ensure that this court, and all other parties reading this brief, will not encounter links that are broken or outdated.

State regulators set rates with the twin aims of providing customers access to reliable and affordable electric service, while also ensuring that investor-owned electric companies can recover their prudently incurred operating costs and expenses as well as a reasonable rate of return of and on invested capital. The same is true in Oregon, through its Public Utility Commission ("PUC"). *See Gearhart v. PUC* (*Gearhart II),* 356 Or 216, 219-20, 339 P3d 904 (2014) (describing public utility ratemaking); ORS 756.040(1) (describing general powers of PUC).

State regulators often effectuate those aims through a so-called "cost-of-service" ratemaking process that takes into account a range of factors. Those factors include the prudency of expenditures; the need for the company to recover operating costs and expenses and attract capital investment; funds required to maintain service reliability and affordability; a desire to balance the usage characteristics of different customer classes (e.g., residential, commercial, industrial); and, in some instances, a desire to promote broader policy goals, such as those related to energy conservation and, increasingly, electrification and the clean energy transition. *See Gearhart II,* 356 Or at 220-21; *cf. id.* at 221 (observing that

"ratemaking *** is governed by statute but largely left to the PUC's discretion"; the PUC "is empowered to make delegated policy choices of a legislative nature within the broadly stated legislative policy" (internal quotation marks and citation omitted)).[2]

Ratemaking is, on the one hand, prospective because PUC-approved rates and tariff language govern the future provision of electric service. On the other hand, ratemaking is, to some degree, retrospective, because the PUC generally takes account of past or present cost data (sometimes through "test years") and also must determine whether certain capital costs were prudently incurred in the service of ratepayers and thus are appropriate for inclusion in the ratemaking formula. The ratemaking process, moreover, can be lengthy and subject to rounds of discovery, briefing, and hearing. *See Gearhart II,* 356 Or at 220-21; *In re Portland Gen. Elec. Co.,* PUC Order No. 08-487, at 6-7 & n31 (Sept. 30, 2008), https://perma.cc/7JXN-MTX9. Electric company expenditures are

---

[2] *See generally* James C. Bonbright, *Principles of Public Utility Rates* 48-81 (1961) (leading treatise; explaining the principal functions of utility ratemaking and the use of "a cost standard of ratemaking" as the "most generally accepted" method of achieving those functions through regulation).

made with, and private capital is accordingly invested in reliance on, the expectation that the company can later recover its prudently incurred expenditures through rates charged to customers. The cost-of-service model reflects the reality that although investor-owned electric companies deploy their resources to serve the general public interest and provide electric service according to fair and reasonable rates and on a non-discriminatory basis, *see* ORS 756.040(1), 757.310(2); *Gearhart v. PUC,* 255 Or App 58, 61, 299 P3d 533 (2013), *aff'd, Gearhart II,* 356 Or 216, the assets and capital are ultimately owned and supplied by private investors—i.e., the company's shareholders.

This exchange between investor-owned electric company and regulator—regulated cost recovery in exchange for the provision of reliable and affordable electric service within a given service area on a non-discriminatory basis—is known in the industry as the "regulatory compact." *See* U.S. Dep't of Energy, *supra,* at A-9; *see also Jersey Cent. Power & Light Co. v. Fed. Energy Regul. Comm'n*, 810 F2d 1168, 1189 (DC Cir 1987) (Starr, J., concurring) ("The utility business represents a compact of sorts; a monopoly on service in a particular geographical area *** is granted to the utility in exchange

for a regime of intensive regulation, including price regulation[.]"); *Gearhart II,* 356 Or at 219 ("Public utilities exhibit characteristics of natural monopolies. For that reason, public utilities often are granted exclusive territories within which to operate, and many aspects of public utility operation are closely regulated by public utility commissions.").[3]

The regulatory compact recognizes that investor-owned electric companies must be able to attract the enormous amounts of capital necessary to provide reliable and affordable electric service over the long term and across a geographically dispersed customer base. By EEI's estimates, its member electric companies, collectively, invest more than $150 billion annually and contribute about 5% to the

---

[3] The regulatory compact often traces its roots to the U.S. Supreme Court's decisions in *Munn v. Illinois,* 94 US 113, 24 L Ed 77 (1876), and *Smyth v. Ames,* 169 US 466, 18 S Ct 418, 42 L Ed 819 (1898), which together recognized the "notion that utilities are businesses operated in the public interest" and thus amenable to greater regulation, as well as the "the quid pro quo of utility regulation." J. Gregory Sidak & Daniel F. Spulber, *Deregulatory Takings and Breach of the Regulatory Contract,* 71 NYU L Rev 851, 881-82 (1996); *accord Hammond Lumber Co. v. Pub. Serv. Comm'n*, 96 Or 595, 604, 189 P 639 (1920) ("[T]o devote its property means that it gives to the public the right or option to demand its service or the use of its property, but this is always subject to the condition of just compensation.").

national gross domestic product. *See* Edison Elec. Inst., *America's Electric Companies: Delivering the Future of Energy: Electric Power Industry Outlook* 2, 6 (2024), https://perma.cc/4TCQ-BJC6. The assurance of cost recovery along with a reasonable rate of return is an essential prerequisite for investor-owned electric companies to attract the necessary large amounts of private capital, whether through issuance of debt or sale of stock, to build, maintain, and operate infrastructure. That understanding, in fact, is codified in Oregon statute. *See* ORS 756.040(1)(b) (a "fair and reasonable" rate of return must provide "a return to the equity holder that is," in part, "[s]ufficient to ensure confidence in the financial integrity of the utility, allowing the utility to maintain its credit and attract capital"). Likewise, it is reflected in both longstanding common law and PUC precedent. *See, e.g., Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.,* 262 US 679, 693, 43 S Ct 675, 67 L Ed 1176 (1923) ("The return should be reasonably sufficient to *** enable [the utility] to raise the money necessary for the proper discharge of its public duties."); *Fed. Power Comm'n v. Hope Nat. Gas Co.,* 320 US 591, 603, 64 S Ct 281, 88 L Ed 333 (1944) (The rate of return "should be sufficient *** to attract capital."); *accord* PUC

Order No. 08-487, *supra,* at 5-6 & nn25-27 (relying on *Bluefield* and *Hope,* among other authorities).

As a matter of basic economics, an investor-owned electric company's cost of capital is strongly affected by the perceived and actual degree of risk that it will be able to recover its costs and provide a reasonable rate of return to investors: "When investors perceive higher risk, the corresponding costs of debt and equity increase." John Quakenbush, Nat'l Ass'n of Regul. Util. Comm'rs, *A Cost of Capital and Capital Markets Primer for Utility Regulators* 9 (2020), https://perma.cc/G3AX-3T6J. In fact, the PUC has recognized that disallowing the recovery of certain prudently incurred costs "would *** be to the detriment of customers" as much as an electric company's investors. PUC Order 08-487, *supra,* at 70-71 & n253. "Because investors would consider [the company] to be a 'riskier' investment, [the company's] costs would go up, including its cost of capital and cost of debt," which inevitably "would result in higher rates for customers." *Id.*

In sum, the regulatory compact recognizes that "[a]lthough the interests of customers and [a utility's] investors are competing, they are also interrelated and reinforcing. A utility cannot provide

adequate service to customers without the ability to attract capital." *Id.* at 6. And it is the assurance of a fair return upon investment, and the predictable application of ratemaking principles, that lowers a utility's cost of obtaining capital, to the benefit of its customers. *See Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm'n of Mo.,* 262 US 276, 308, 43 S Ct 544, 67 L Ed 981 (1923) (Brandeis, J., concurring) ("The community can get cheap service from private companies, only through cheap capital. *** It can get ample service through private companies, only if investors may be assured of receiving continuously a fair return upon investment."); *see also In re Portland Gen. Elec. Co.,* PUC Order No. 03-024, at 3 (Jan. 13, 2003), https://perma.cc/Q548-TT6R ("PGE's ability to keep capital costs low directly affects its ability to acquire utility property and facilities and to improve and maintain service.").

Consequently, when the regulatory compact breaks down, it becomes difficult (or, at best, more expensive) for an electric company to raise capital to maintain and improve its infrastructure and service, diminishing its capacity to provide reliable and affordable service to their customers over the long run.

/ / /

II. UNPREDICTABLE AND EFFECTIVELY UNCAPPED AND UNAVOIDABLE LIABILITITES THREATEN THE REGULATORY COMPACT AND ULTIMATELY THE FINANCIAL STABILITY OF INVESTOR-OWNED ELECTRIC COMPANIES.

A. Significant civil monetary liabilities, imposed without regard to fault or causation, place strain on an investor-owned electric company's ability to raise and deploy necessary capital in service of customers.

Civil monetary liabilities present an often unanticipated, unpredictable, and disruptive force to the regulatory compact, which already must balance many competing interests to arrive at a fair and reasonable rate that benefits both the electric company and its customers. Civil liabilities often ultimately translate into higher rates for the customer base. If the electric company is permitted to recover the costs through its rates,[4] the effects felt by customers will be direct. The effects can be most pronounced on residential customers, for whom electric service may represent a greater fraction of household budgets than commercial or industrial customers. *See*

---

[4] Regulators in at least some states have signaled a troubling retreat from longstanding principles of cost recovery. As just one example, in 2018, the California Public Utilities Commission denied one electric company's application to recover approximately $379 million related to wildfire liabilities. *See* Order Denying Rehearing of Decision (D.) 17-11-033, Decision No. 18-07-025, at 3-4, (Cal. Pub. Utils. Comm'n July 12, 2018), https://perma.cc/PDE3-CKMP.

Arthur Abal et al., Nat'l Ass'n of Regul. Util. Comm'rs, *Primer on Rate Design for Cost-Reflective Tariffs* 12-13 (2021), https://perma.cc/GZ7V-DLSD; U.S. Energy Info. Admin., *Electric Power Monthly: Average Price of Electricity to Ultimate Customers,* Table 5.3 (Jan. 24, 2025), https://perma.cc/4U9S-RHZH.

But even if recovery were disallowed (i.e., if the electric company were prohibited by the PUC from recovering through the rates charged customers), downstream consequences for customers would remain. In the short term, such "under-recovery" would likely force cost cutting or the need to raise additional (and increasingly costly) capital to bridge the shortfall. *See* Abal, *supra,* at 11. The former option reduces the electric company's capacity to make needed investments in maintenance and upgrades, such as those aimed at minimizing or mitigating wildfire risk; the latter shifts financial burdens onto future customers, making electric service less affordable in the future. *Id.* In the longer term, continued risk of under-recovery would doubtless increase the cost of capital and accordingly result in higher rates. Perhaps worse, that trend may lead to underinvestment in infrastructure, requiring the electric company to rely on older and less productive or reliable equipment

and facilities, or may limit its ability to make the kinds of prospective investments needed to facilitate electrification, advance the energy transition, and respond to and mitigate wildfire risk. *Id.* In other words, even under a "disallowance" scenario, customers would still eventually bear at least some indirect costs from massive civil monetary liabilities, as well as suffering potential degradation in the reliability and quality of service. There is no "free lunch," either under core tenets of utility regulation or as a matter of basic economics.

These concerns are precisely why utility tariffs (in the energy, telecommunications, and other sectors) often include provisions limiting liability for certain torts, service interruptions, or other sources of liability. *See Garrison v. Pac. Nw. Bell,* 45 Or App 523, 531, 608 P2d 1206 (1980) (observing the validity of liability-limiting provisions "so long as they do not purport to grant immunity or limit liability for gross negligence"). A key underlying principle for such provisions is that "because a utility's rate of return is regulated by the State, investors are only willing to contribute capital based on the assumption the utility will not face the exposure that an unregulated utility may face"; the "public interest," in that respect,

lies "in protecting the financial integrity of public utilities." *Houston Lighting & Power Co. v. Auchan USA, Inc.,* 995 SW2d 668, 674-75 (Tex. 1999) (cleaned up); *cf.* ORS 756.040(1)(b) (a "fair and reasonable" rate must be "sufficient to ensure confidence in the financial integrity of the utility, allowing the utility to maintain its credit and attract capital").[5]

Another related consideration is that electric companies are generally prohibited from straying from the rates, terms, and conditions set forth in the tariff filed with and approved by its regulator, unless and until changes are reviewed and approved prospectively. This is often referred to as the "filed rate" or "filed tariff" doctrine. *See* ORS 757.225; PUC Order No. 08-487, *supra,* at 32-36; *see also Pac. Nw. Bell Tel. Co. v. Eachus,* 135 Or App 41, 49, 898 P2d 774 (1995) ("[R]ates that have been approved and are in

---

[5] The law in other jurisdictions nationwide is to similar effect. *E.g., S. Bell Tel. & Tel. Co. v. Invenchek, Inc.,* 130 Ga App 798, 800, 204 SE2d 457 (Ga. Ct. App. 1974) (Because "it is to the public interest to have uninterrupted service at a reasonable price, it necessarily follows that a reasonable limitation of liability for damages for interrupted telephone service may be considered as a part of the telephone ratemaking function."); *Cole v. Pacific Tel. & Tel. Co.,* 112 Cal App 2d 416, 418, 419-20, 246 P2d 686 (Cal. Dist. Ct. App. 1952) (explaining that "[r]easonable rates are in part dependent upon" "a limitation of liability").

force may be adjusted only pursuant to process described in the statutes."). Practically speaking, the filed-rate doctrine means that an investor-owned electric company cannot as easily protect itself from exposure to liability in the ways an unregulated business can do, such as by raising customer rates, bargaining for individualized or additional limitations of liability, or scaling back or declining to provide electric service.

Although this case does not presently implicate liability-limitations provisions or the filed-rate doctrine, the underlying policy principles are no less salient in the context of class-action suits and tort claims: Absent reasonable and predictable adherence to traditional guardrails, there is an acute risk that effectively uncapped civil liabilities—imposed without regard to fault or causation or limitations on recovery of noneconomic damages—could hinder an investor-owned electric company's ability to provide reliable and affordable service, disserving the goals and foundational principles of the regulatory compact.

/ / /

/ / /

/ / /

B. Recent wildfire litigation has produced downstream consequences that threaten the regulatory compact's careful balance, to the detriment of electric companies and customers alike.

This case is not the first attempt to hold an investor-owned electric company liable for wildfire-related damages under a variety of legal theories. The problem, however, is that this and similar wildfire litigation has threatened the regulatory compact by diminishing the predictability of legal regimes and by raising the specter of unpredictable, uncapped, and (to some extent) unavoidable civil liabilities.

Since 2020, credit rating agencies have downgraded the ratings of certain investor-owned electric companies, citing wildfire risk as a driving factor. This has been the case for some electric companies serving Oregon, as well as California, Colorado, and Texas, among other states throughout the western, southwestern, and southeastern United States. *See* Emma Penrod, *Nearly 100 Utilities' Credit Rating Downgraded Since 2020 as Wildfire Risks Grow,* Utility Dive (Oct. 23, 2024), https://perma.cc/MUW5-PS8U. As explained above, *see supra* at pp. 12-14, difficulties in attracting private capital can have downstream consequences for that company's customer base,

whether through higher rates or diminished service. *See also* PUC Order No. 03-024, *supra,* at 3 ("Lower credit ratings translate into reduced access to capital markets, increased borrowing costs, and ultimately, higher rates for utility service."). According to a recent report from S&P Global, wildfire risk, and the attendant threat of mass tort litigation, has increasingly become "a material credit consideration for exposed utilities" and has generated "stress fractures" in the regulatory compact, to the detriment of electric companies' financial health. *See* Kyle M. Loughlin & Daria Babitsch, *Wildfire-Exposed U.S. Investor-Owned Utilities Face Increasing Credit Risk Without Comprehensive Solutions,* S&P Global (Nov. 6, 2024), https://www.spglobal.com/ratings/en/research/articles/241106-wildfire-exposed-u-s-investor-owned-utilities-face-increasing-credit-risks-without-comprehensive-solutions-13297812. [6] Moreover, while investor-owned electric companies generally carry wildfire insurance, the liabilities can often vastly outstrip coverage, and the escalating

[6] The report, in fact, specifically cites the "substantial non-economic and punitive damages" in the class-action litigation against PacifiCorp here as evidence of the "expos[ure] to large damages" that threatens the financial stability of investor-owned electric companies throughout the United States. *See* Loughlin & Babitsch, *supra.*

cost of coverage can, at times, itself be greater than the cost of self-insurance. *See* Mark Chediak, *Wildfire Threats Make Utilities Uninsurable in U.S. West,* Bloomberg (June 24, 2024), https://perma.cc/MTA8-FA4J.

Unfortunately, there is little reason to believe that wildfire risk within any particular service area will simply go away. Utilities generally have a legal obligation to serve all customers within their particular service area, new and existing alike. *See* ORS 757.020 (requirement to "furnish adequate and safe service"); *Reynolds v. Juniper Util. Co.,* PUC Order No. 01-827, 2001 WL 34001633 (Sept. 25, 2001) (interpreting ORS 757.020 to impose "a duty to provide service to current and future customers"). This remains the case even as more and more customers choose to locate, invest, build, and otherwise encroach upon the "wildland-urban interface," i.e., those geographic areas where structures and other human development meet or intermingle with flammable vegetation, thus increasing the risk of wildfire incidents or even disasters. Oregon's recent mapping efforts have shown that significant portions of the State are at "High" (90th percentile or above) or "Moderate" (between the 90th and 40th

percentile) wildfire hazard risk.[7] This aligns with research on increasing housing development in the wildland-urban interfaces of Oregon, California, and Washington between 1990 and 2000. *See* Roger B. Hammer et al., *Wildland-Urban Interface Housing Growth During the 1990s in California, Oregon, and Washington,* 16 Int'l J. of Wildland Fire 255, 261-64 (2007), https://www.fs.usda.gov/pnw/pubs/journals/pnw_2007_hammer001.pdf. Encroachment on the wildland-urban interface is also often accompanied by strong fire suppression policies, which can result in the accumulation of fuel and contribute to increasingly devastating outcomes when a large-scale fire does occur, as well as the increased likelihood of human-ignited fires. *See* Stijn Hantson et al., *Human-Ignited Fires Result in More Extreme Fire Behavior and Ecosystem Impacts,* 13 Nature Commc'ns 2717, at 4-6 (2022), https://perma.cc/DB6H-NS4P; Jennifer K. Balch et al., *Human-*

---

[7] The final Oregon Statewide Wildfire Hazard and Wildland-Urban Interface Maps are available at https://hazardmap.forestry.oregonstate.edu/explore-map. *See generally* Chris Dunn & Andy McEvoy, Or. State Univ., *Technical Guide: Mapping Wildfire Hazard and the Wildland-Urban Interface to Support Implementation of Oregon's 2023 Senate Bill 80* (2025), https://perma.cc/BQA9-UAP6.

Started Wildfires Expand the Fire Niche Across the United States, 114 Proc. of Nat'l Acad. of Scis. 2946, 2948–50 (2017), https://www.pnas.org/doi/epdf/10.1073/pnas.1617394114.

Unfortunately, scientists project continued increases in the scale, intensity, and frequency of wildfire activity across the western United States attributable to, among other things, climate change. *See, e.g.,* U.S. Glob. Change Rsch. Program, *Fifth National Climate Assessment: Focus on Western Wildfires,* at F2-5 to F2-6 (2023), https://perma.cc/7M58-RMKY; John T. Abatzoglou & A. Park Williams, *Impact of Anthropogenic Climate Change on Wildfire Across Western US Forests,* 113 Proc. of Nat'l Acad. of Scis. 11,770, 11,773 (2016), https://www.pnas.org/doi/epdf/10.1073/pnas.1607171113.

In short, investor-owned electric companies are often caught in a Catch-22 with respect to wildfires. On the one hand, they are obligated to provide electric service to those in their service area. On the other hand, the provision of that service, especially in places of higher wildfire risk, can be viewed as increasing the risk of significant civil liabilities that impact financial health and operations, even where (as is the case here) some wildfires are not

their fault. *See* PacifiCorp Br. 15-16, 48-54 (discussing lightning-ignited wildfire on federal land). To be sure, PacifiCorp and other electric companies have made enormous *ex-ante* efforts to reduce or mitigate wildfire risk in their service areas. *See* PacifiCorp Br. 14-15 (summarizing some of PacifiCorp's wildfire mitigation policies and practices); *see also* Edison Elec. Inst., *Issues & Policy: Wildfire Mitigation & Liability,* https://perma.cc/9FVU-EQWT (last accessed Mar. 12, 2025). But from an *ex-post* perspective, companies like PacifiCorp must rely on sound, stable, and predictable legal regimes to protect them from becoming saddled with potentially disabling civil liabilities, especially those lacking a causal connection to their conduct or actions. Unfortunately, the circuit court's decisions below undermine those protections.

III. THE CIRCUIT COURT'S DECISIONS MINIMIZE OR ELIMINATE ESSENTIAL CLASS-ACTION AND SUBSTANTIVE GUARDRAILS, EXPOSING PACIFICORP TO EXCESSIVE CIVIL LIABILITIES, WHICH RUNS CONTRARY TO KEY TENETS OF THE REGULATORY COMPACT.

PacifiCorp ably identifies and explains the factual and legal errors in the circuit court's decisions. But more broadly, the circuit court's decisions, if affirmed, undermine the regulatory compact, to the detriment of investor-owned electric companies and their

customers alike. The judgments effectively render PacifiCorp an "insurer of last resort" for the Labor Day 2020 wildfires, regardless of its actual fault with respect to a particular class member's injury or legally cognizable damages. That result risks imposing on PacifiCorp potentially billions of dollars in aggregate damages, *see* PacifiCorp Br. 4, which are precisely the type of disabling civil liabilities that undermine the regulatory compact.

Investors and creditors alike have taken notice of the overall uptick in wildfire litigation against investor-owned electric companies, the unpredictability of existing legal frameworks in handling wildfire litigation, the potential for massive civil liabilities, and the harms to investor-owned electric companies stemming from those massive judgments. *See* Loughlin & Babitsch, *supra.* And the negative consequences of a company's diminished ability to attract necessary capital at reasonable rates will fall not just on the company itself, but ultimately on its customers and the electricity-consuming general public, whether through less reliable, less efficient, and/or less affordable electric service.[8] Investor-owned

[8] Relatedly, rising electricity costs, or less efficient or less reliable electric service, could hamper certain policy efforts, including state

electric companies, moreover, would likely need to divert sums to pay litigation costs and judgments that would otherwise have been invested for more forward-looking purposes that benefit customers and the public—maintaining, improving, and hardening grid infrastructure; minimizing and mitigating wildfire risk; building new electric transmission associated with the energy transition; and advancing broader electrification goals and policies.

These concerns bring into sharp focus the problems with the circuit court's legal analyses and decisions. The circuit court glossed over or eliminated several doctrinal guardrails, and seemingly ignored undisputed evidence that many class members were injured by a lightning-ignited fire on federal land (the Beachie Creek Fire), not actions taken by PacifiCorp. *See* PacifiCorp Br. 15-16, 48-54. By improperly lessening or even eliminating plaintiffs' burden to prove key elements of their claims, the circuit court has ratcheted up the likelihood that an investor-owned utility will be subject to higher

---

clean-energy policies aimed at increasing electrification across certain sectors, such as transportation and heating. *See, e.g.,* Senate Bill (SB) 1044 (2019 Reg. Sess.) (goals for the promotion of zero-emission vehicle use); House Bill (HB) 3409 (2023 Reg. Sess.) (goals and policies related to, among other things, adoption of medium and heavy-duty zero-emission vehicles and residential heat pumps).

(and ultimately unjustified) monetary judgments, an outcome that threatens the regulatory compact for all the reasons described above.

On the issue of class certification, the circuit court certified a class of thousands of people affected by four different fires despite the presence of numerous individualized questions of fact and law that are not susceptible to common proof. Those individualized questions—e.g., how a particular fire was ignited, whether that ignition was attributable to negligence, the path of the fire from ignition to a particular class member's property, and the extent to which a particular fire caused damage to that property—predominate the action and make a class action a poor vehicle for resolution. *See* ORCP 32(B)(3); *Pearson v. Philip Morris, Inc.,* 358 Or. 88, 110-11, 361 P3d 3 (2015); *see also* PacifiCorp Br. 33-44.

That is why courts, where confronted with similar mass-tort actions premised on complex theories of wildfire liability asserted against electric companies, have often ***denied*** class certification. *See Downing v. San Diego Gas & Elec. Co.,* 2010 WL 4233033, at *9 (Cal. Ct. App. Oct. 27, 2010) (unpublished) (observing that "[e]ven if Plaintiffs will be able to show that the three fires were originally ignited through the [a utility's] negligence," individual inquiries

predominate as to "the spreading of the fires," "the devastation they caused at their ultimate destinations," and the utility's "affirmative defenses"); *see also* Order Denying Pls.' Am. Mot. for Class Certification and Trial Plan, *In re Bastrop Cnty. Complex Fire Litig.*, No. 2012-MCF-01, 2015 WL 13631338, at *3-5 (Tex. Dist. Ct. Mar. 03, 2015) (concluding that "the most critical issues in this case—liability, causation, comparative negligence or damages—cannot be resolved on a class-wide basis").

Similarly, courts typically ***deny*** class certification for mass-tort-type actions premised on allegations of an electric company's insufficient preparation, grid management, or maintenance, such as in the context of a severe weather event causing widespread interruptions in electric service. Those courts have (rightly) concluded that even if the named plaintiffs "were to prove [the electric company's] failures, it would still remain for each class member to show that those failures caused a prolonged outage on an individual basis," which would cause the action to "degenerate in practice into multiple lawsuits separately tried." *Bellermann v.*

Fitchburg Gas & Elec. Light Co., 470 Mass 43, 54-55, 59-60, 18 NE3d 1050 (Mass. 2014) (internal quotation marks and citation omitted).[9]

On the issue of causation, the circuit court effectively relieved plaintiffs (most notably, those with property in the Santiam Canyon) from needing to demonstrate a causal link between a particular fire supposedly attributable to PacifiCorp, and damage to their specific property. Instead, the court seemingly found sufficient plaintiffs' evidence purportedly showing that PacifiCorp equipment caused a handful of spot fires in the middle of Santiam Canyon, together with evidence that plaintiffs' properties were burned by ***a*** fire—skipping over the numerous gaps of proof in the causal chain. That approach was incorrect as a matter of law and fact, for reasons PacifiCorp has explained. *See* PacifiCorp Br. 46-58. Ultimately, the circuit court's loose approach to causation, if accepted by this court, potentially opens the door to a much wider range of tort and wildfire-related actions against investor-owned electric companies, which could

---

[9] *See also, e.g., Muise v. GPU, Inc.,* 371 NJ Super 13, 37-46, 851 A2d 799 (N.J. Super. Ct. App. Div. 2004); *Tegnazian v. Consol. Edison, Inc.,* 730 NYS2d 183, 186-87, 189 Misc 2d 152 (N.Y. Sup. Ct. 2000); *Entergy Gulf States, Inc. v. Butler,* 25 SW3d 359, 361-64 (Tex. App. 2000).

further increase the overall amount of liability, and lead to inconsistent verdicts effectively subjecting utilities to varying or even conflicting standards of conduct. *Cf.* Byron G. Stier, *Jackpot Justice: Verdict Variability and the Mass Tort Class Action,* 80 Temp L Rev 1013, 1014-16, 1018-20 (2007).

Finally, on the issue of noneconomic damages, PacifiCorp ably explains how the circuit court departed from Oregon law restricting noneconomic damages in cases like this one, involving unintentional property damage without physical injury to plaintiffs. *See* PacifiCorp Br. 78-90. In addition to the doctrinal concerns raised by PacifiCorp, this court should also consider the negative practical consequences of saddling an investor-owned electric company with substantial (and potentially disabling) noneconomic damages—here, over ***twelve times*** the total amount of economic damages in the Phase I trial (*see* PacifiCorp Br. 79)—to the detriment of the company's customers and the public writ large.

* * *

The negative real-world consequences of the circuit court's decisions, if allowed to stand, are by no means limited to the parties to, and class of plaintiffs at issue in, this case. Rather, an

affirmance—effectively condoning the lessening of plaintiffs' burdens of proof and the imposition of substantial noneconomic damages—will have detrimental downstream effects on the availability of affordable, reliable, and efficient electric service for Oregonians.

CONCLUSION

For the foregoing reasons, *amicus curiae* EEI urges the court to grant the relief requested by Defendants-Appellants PacifiCorp and Pacific Power.

Respectfully submitted this 8th day of April, 2025.

HARRANG LONG P.C.

By: s/J. Aaron Landau

J. Aaron Landau, OSB #094135
aaron.landau@harrang.com
Telephone: (541) 485-0220
Facsimile: (541) 686-6564

and

Jeremy C. Marwell, *Pro Hac Vice Forthcoming*
Vinson & Elkins LLP
2200 Pennsylvania Avenue, NW
Suite 500 West
Washington, DC 20037
(202) 639-6507
jmarwell@velaw.com

Of Attorneys for Amicus Curiae Edison Electric Institute

COMBINED CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS, AND CERTIFICATES OF FILING AND SERVICE

I certify that this brief complies with the word–count limitation in ORAP 5.05, which word count is 5,330.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

I certify that on April 8, 2025 I filed this brief with the Appellate Court Administrator on this date.

I certify that on April 8, 2025 service of a copy of this brief will be accomplished on the following participant(s) in this case, who is a registered user of the appellate courts' eFiling system, by the appellate court's eFiling system at the participant's email address as recorded this date in the appellate eFiling system:

Per A. Ramfjord
Brad S. Daniels
Reilley D. Keating
per.ramfjord@stoel.com
brad.daniels@stoel.com
reilley.keating@stoel.com

Alison L. Plessman
Rajan S. Trehan
Stephanie W. Xiao
Khoa D. Nguyen
aplessman@hueston.com
rajan.trehan@hueston.com

Keith A. Ketterling
Timothy S. DeJong
Cody Berne
Emily A. Johnson
Erin E. Roycroft
kketterling@stollberne.com
tdejong@stollberne.com
cberne@stollberne.com
ejohnson@stollberne.com
eroycroft@stollberne.com

Nicholas A. Kahl
nick@nickkahl.com

sxiao@hueston.com
knguyen@hueston.com

Douglas J. Dixon
Craig A. Fligor
ddixon@hueston
clfligor@hueston.com

Blaine H .Evanson
bevanson@gibsondunn.com

Of Attorneys for Defendants-Appellants, Cross-Respondents

Denise Fjordbeck
denise.fjordbeck@doj.oregon.gov
Of Attorneys for Creditor-Respondent

Matthew J. Preusch
Yoona Park
Sarah R. Osborn
Daniel Mensher
Natida Sribhibhadh
mpresusch@kellerrohrback.com
ypark@kellerrohrback.com
sosborn@kellerrohrback.com
dmensher@kellerrohrback.com
natidas@kellerrohrback.com

Rafey S. Balabanian
Brandt Silver-Korn
Todd Logan
Nicholas Rosinia
Amy Hausmann
Zoe Seaman-Grant
Landon Webster
Megan Delurey
Alexander Glenn Tievsky
rbalabanian@edelson.com
bsilverkorn@edelson.com
tlogan@edelson.com
nrosinia@edelson.com
abhausmann@edelson.com
lwebster@edelson.com
mdelurey@edelson.com
atievsky@edelson.com

Derek C. Johnson
Marilyn A. Heiken
djohnson@justicelawyers.com
mheiken@justiccelawyers.com

Of Attorneys for Plaintiffs-Respondents, Cross-Appellants

HARRANG LONG P.C.

By: s/J. Aaron Landau
J. Aaron Landau, OSB #094135
aaron.landau@harrang.com
Of Attorneys for Amicus Curiae Edison Electric Institute