

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

PACIFICORP d/b/a PACIFIC POWER &
LIGHT COMPANY,

Petition for an Order Approving Deferral
of Costs Related to Wildfire Claims.

DOCKET UE-230495

COMMISSION STAFF RESPONSE
TO PETITION FOR ACCOUNTING
DEFERRAL ORDER

I. INTRODUCTION

1 The Commission should deny this petition. The costs described in the petition are not recoverable from Washington ratepayers. Because the costs described cannot be collected in Washington rates, the petition for deferred accounting of those costs should be denied.

II. RELIEF REQUESTED

2 Commission staff (Staff) requests that the Commission deny the petition.

III. STATEMENT OF FACTS

3 PacifiCorp (PacifiCorp or Company) “requests authorization to defer the incremental costs associated with PacifiCorp’s third-party claims for the wildfires that occurred in September of 2020.”¹ These incremental costs are “the third-party claims that may exceed the Company’s insurance coverage currently in rates associated with the outcomes of this litigation due to wildfires that occurred in September 2020.”² The wildfires in question and the resulting third party claims all occurred in Oregon and California.³ The petition highlights the *James v. PacifiCorp*⁴ case, in which the Company was found liable for

¹ Petition at 3, ¶ 5.

² *Id.*

³ *Id.* at 2-3, ¶ 4.

⁴ *James v. PacifiCorp*, No. 20-CV-33885 (Cir. Ct. Multnomah County, Jun. 12, 2023).

a total of \$88 million dollars.⁵ In that case, the jury found PacifiCorp grossly negligent, and found the Company’s conduct was both reckless and willful.⁶

IV. LEGAL STANDARD

4 The Commission may authorize utilities to defer expenses or revenues to recognize them in a later period.⁷ The Commission will grant a petition for deferred accounting if it finds extraordinary circumstances.⁸ The amount in question must be material.⁹ When setting an electric utility’s authorized rates, the Commission must set rates that are equitable, fair, just, reasonable, and sufficient.¹⁰ To that end, a regulated utility is only allowed to recover costs prudently incurred to serve the ratepayers within its service territory.¹¹ The Commission may deny the recovery of imprudent expenditures.¹²

V. ARGUMENT

5 The Commission should deny a petition for deferred accounting where the costs in question could not be included in Washington customer rates. Under the Commission’s

⁵ Petition at 3, ¶ 7.

⁶ Attachment 1, *James et. Al. v. PacifiCorp*, No. 20-CV-33885, Final Verdict, pp. 4-7 (Or. Cir. Multnomah County, Jun. 9, 2023).

⁷ See WAC 480-100-203(3)-(4).

⁸ *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Dockets UE-140762 & UE-140617 & UE-131384 & UE-140094, Order 08, 114, ¶ 273 (Mar. 25, 2015) (“These costs are in no sense “extraordinary,” a criterion that should apply to a cost deferral accounting mechanism at the time requested and at the time any recovery is sought.”); *Id.* at 107, ¶ 251 (“We emphasize, then, that the treatment we allow in this instance is exceptional and turns on the unusual nature of the project involved.”).

⁹ *Wash. Utils. & Transp. Comm’n v. Nw. Nat. Gas Co.*, Dockets UG-080519 & UG-080530, Order 01, 3, ¶ 7 (May 02, 2008) (“In prior decisions concerning accounting petitions, the Commission has determined that deferred amounts must be of a magnitude such that recording the costs under the Federal Energy Regulatory Commission’s uniform system of accounts has a material impact on company earnings.”).

¹⁰ *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy*, Dockets UE-220066, UG-220067, & UG-210918 (*Consolidated*) Final Order 24/10, pp. 11 ¶ 53 -13, ¶ 58.

¹¹ *In re the Commission Inquiry into the Valuation of Public Service Company Property that Becomes Used and Useful after Rate Effective Date*, Docket U-190531, Policy Statement on Property that Becomes Used and Useful after Rate Effective Date, p. 15, ¶ 45 (Jan. 31, 2020) (“Valuation Policy Statement”) (“Any rate-effective period investment amounts found during the review process not to be used and useful, known and measurable, adequately matched to offsetting factors, and prudently incurred, will be refunded to customers.”).

¹² See e.g., *In re Investigation of Avista Co., d/b/a Avista Utilities, Puget Sound Energy, and Pac. Power & Light Co. Regarding Prudence of Outage and Replacement Power Costs*, Docket UE-190882, Final Order 05, p. 11, ¶ 40 – p. 12, ¶ 42 (March 20, 2020).

standards, there is no scenario in which the Commission would permit a regulated entity to recoup the costs of a judgment stemming from a lawsuit wherein the company was found grossly negligent regarding incidents that occurred in a different state.

6 First, the costs described in the petition are not related to serving Washington state customers. The incremental expenses related to the judgments against PacifiCorp do not benefit Washington ratepayers in any way, nor was incurring these costs necessary to provide Washington ratepayers with electric service. To the extent that the Company should be allowed *any* recovery from *any* ratepayers, that recovery should come from the states in which these incidents occurred and the judgment was determined against the Company. The recovery sought by the Company in this petition is not for costs related to any needed repairs or reconstruction as a result of these fires, nor are they increases in insurance costs; the costs at issue in this matter -as defined by the petition- are solely related to the civil judgments against the Company. These judgments are akin to costs that the Commission excludes from a regulated utility's revenue requirement, such as advertisements, lobbying, and charitable donations.¹³ These costs are considered below-the-line for a reason: they are not necessary to serve customers. The actions that led to the judgments against PacifiCorp were likewise unnecessary to serve Washington customers. These costs are the result of imprudent decisions made by the Company; they were not incurred in the normal course of providing service to ratepayers.

¹³ See, *Wash. Utils. & Transp. Comm'n v. Puget Sound Pilots*, Docket TP-190973, Order 09, p. 95, ¶ 326 (Nov. 25, 2020) (Puget Sound Pilots 2019 GRC Order) (Describing “political lobbying, dues, and advertising costs” as “expense items not allowed in regulatory accounting”); Regulatory Assistance Project, *Electricity Regulation in the US: A Guide* 2nd edition, p. 58 (2016) (“Most commissions exclude costs that are not required to provide service, such as charitable contributions by the utility, political lobbying expenses, and image-building advertising[.]”); see also, *Jewell v. Wash. Utils. and Transp. Comm'n*, 90 Wn.2d 775, 779-81, 585 P.2d 1167 (1978) (Charitable donations not recoverable from ratepayers).

7

Second, even if these events had occurred in the Company's Washington service territory, the Commission would not permit recovery of the costs from ratepayers.¹⁴ The petition cites no case law, statute, or commission rule supporting the proposition that a judgment in which a regulated utility is found grossly negligent is nonetheless recoverable through customer rates. It would not be reasonable to allow recovery from civil judgments in which a Company was found grossly negligent. Acting negligently is not acting prudently, as both Oregon and Washington's case law on gross negligence clearly indicate.¹⁵ Prudence is a reasonableness test.¹⁶ Although gross negligence is defined differently in different jurisdictions, grossly negligent conduct under any definition is also unreasonable conduct.¹⁷ Therefore, the same decision cannot be both grossly negligent and prudent.

8

Furthermore, Washington ratepayers already contribute to the cost of mitigating the risk of these kinds of claims. PacifiCorp's insurance expense is a cost included in rates.¹⁸ Washington customers already bear the risk of civil judgments against the Company by paying for those premiums in rates. That PacifiCorp is subject to even further costs because of its own gross negligence does not justify additional collection from ratepayers. It is clear

¹⁴ See e.g., *Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA)*, Decision Denying Application (Dec. 6, 2017) (CPUC denying San Diego Gas & Electric Company's application to recover third-party damage claims arising from wildfires.) Available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M200/K045/200045020.PDF>.

¹⁵ *Harper v. State*, 192 Wn.2d 328, 343, 429 P.3d 1071 (2018) ("Thus, a person acts with gross negligence when he or she exercises 'substantially or appreciably' less than that degree of care which the reasonably prudent person would exercise in the same or similar circumstances."); *WSB Investments, LLC v. Pronghorn Development Co., LLC* Court of Appeals of Oregon, 269 Or.App. 342, 344 P.3d 548 (2015) ("Gross negligence" generally means negligence characterized by near total disregard or indifference to the rights of others or the probable consequences of a course of conduct.)

¹⁶ *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co.*, Docket UE-152253, Order 12, p.33, ¶ 94 (Sept. 1, 2016) ("The Commission has often cited the prudence legal standard as thus: What would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision?").

¹⁷ See n.15.

¹⁸ See e.g., *Wash. Utils. & Transp. Comm'n v. Pac. Power & Light Co.*, Docket UE-230172, Coleman, Exh. MVC-1T (filed Oct. 27, 2023).

that even if the incremental costs were material, inclusion of these costs in customer rates would be inappropriate.

9 Third, any impact on the financial stability of the Company as a result of these claims can be addressed through a cost of capital decision in a future rate case. If the Commission permits it,¹⁹ PacifiCorp may reply that it is in the public interest to grant the petition because of the potential consequences if the Company is not allowed to defer and recover these costs. In the petition, the Company states:

The combined amount of these claims from these wildfires may represent a material impact to the financial stability of the Company that resulted from unique and unforeseen circumstances outside the Company's reasonable control. ...The potential magnitude of the claims may exceed normal costs anticipated by PacifiCorp and included in its retail rates and could also far exceed the reasonable business risk associated with these claims.²⁰

The ultimate costs of the claims against PacifiCorp are unknown, as the petition acknowledges. But for the sake of argument, let us accept as true that the judgments will ultimately be large enough that the incremental costs represent a material impact on the financial stability of the Company. Even if true, this would not warrant authorizing deferred accounting of costs that could not otherwise be included in customer rates. A material impact on company earnings is a necessary but not sufficient element when considering a petition to defer accounting.²¹ In the event that the claims in question do impact the financial stability of the Company, that issue could be properly addressed in the next rate case when determining the cost of capital. At that point, the Commission would consider the financial stability of the

¹⁹ WAC 480-07-370(5)(a): "A party must not file a reply without permission from the commission, which the commission will grant only upon a showing of good cause."

²⁰ Petition at 4, ¶ 8.

²¹ For example, the Commission would not allow rate recovery of lobbying/political donations even if those below-the-line costs materially impacted the company's earnings.

Company when making decisions related to return on equity²² and whether to authorize a hypothetical capital structure.²³ Because the wildfire claims are not recoverable from Washington customers, future cost of capital decisions would be the appropriate vehicle to address any issues related to the impacts these judgments may have on PacifiCorp's overall financial stability.²⁴

VI. CONCLUSION

10 The Commission should deny a deferred accounting petition when the Commission would not approve including those costs in customer rates. By seeking deferred accounting for later recovery of the costs in question, PacifiCorp effectively argues that its investors should pay no portion of the wildfire judgments against the Company. Customers already pay insurance costs through rates. PacifiCorp, like all investor-owned utilities, is not guaranteed recovery in all instances,²⁵ and is certainly not entitled to recover expenses resulting from gross negligence. An authorized return is included in the Company's approved rates in recognition of those risks. Staff can think of few examples where it is clearer that ratepayers should not bear a particular cost than this case.

²² The cost of equity is an estimate of the likely return an investor would require to invest in an enterprise with comparable risks. *See Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1944); *Bluefield Waterworks & Impr. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923).

²³ *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc.*, Dockets UE-040640 & UG-040641, Order 06, 13, ¶ 27 (Feb. 18, 2005) (The Commission must balance the "economy" of lower cost debt with the "safety" of higher cost common equity.)

²⁴ Staff does not suggest that in this scenario it would necessarily be appropriate to adjust ROE or the capital structure to compensate for any and all financial impacts that were the result of the wildfire claims. The Commission would need to assess the facts of the case and determine whether compensating the Company to address financial stability is fair and reasonable in light of the circumstances.

²⁵ *See e.g., Willman v. Wash. Utils. & Transp. Comm'n*, 122 Wn. App. 194, 204, 93 P.3d 909 (2004) ("A utility is not permitted to recover every expense in its rate structure; the WUTC 'has the power to review operating expenses incurred by a utility and to disallow those which were not prudently incurred.'") (quoting *People's Org. for Wash. Energy Res. v. Utils. & Transp. Comm'n*, 104 Wn.2d 798, 810, 711 P.2d 319 (1985); Puget Sound Pilots 2019 GRC Order at 10, ¶ 36 ("By setting rates based on the cost of providing service, the Commission sets "an authorized rate of return which represents an *opportunity*, given wise and efficient management, to earn that return." citing *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-84, Order p. 57-58 (Sept. 28, 1984)).

DATED this 4th day of March, 2024.

Respectfully submitted,

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ATTACHMENT 1

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
 2 FOR THE COUNTY OF MULTNOMAH

3 JEANYNE JAMES, ROBIN COLBERT,
 4 JANE DREVO, SAM DREVO, BROOKE
 5 EDGE AND BILL EDGE, SR., LORI
 6 FOWLER, IRIS HAMPTON, JAMES
 7 HOLLAND, RACHELLE MCMASTER,
 8 KRISTINA MONTOYA, NORTHWEST
 9 RIVER GUIDES, LLC, SHARIENE
 10 STOCKTON AND KEVIN
 11 STOCKTON, VICTOR PALFREYMAN,
 12 PALFREYMAN FAMILY TRUST, AND
 13 DUANE BRUNN, individually and on behalf
 14 of all others similarly situated,

Plaintiffs,

v.

15 PACIFICORP, an Oregon corporation;
 16 and PACIFIC POWER, an Oregon
 17 registered electric utility and assumed
 18 business name of PACIFICORP,

Defendants.

Case No. 20CV33885

Case Assigned to: Hon. Steffan Alexander

FINAL VERDICT

19 We, the jury, find:

20 I. **FIRST CLAIM FOR RELIEF: NEGLIGENCE**

21 **QUESTION 1:** Was the Defendant negligent in one or more of the ways the
 22 plaintiffs claim as to the Plaintiffs and the entire class within the boundaries of the fire areas
 23 below?

24 Echo Mountain Complex fire YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

25 Santiam Canyon fire YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

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South Obenchain fire

YES NO _____

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

242 fire

YES NO _____

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

If "yes," for any of the fire areas go to question 2.

If "no" for any of the fire areas your verdict on Claim One is for defendant for that fire area. Do not answer question 2 for any fire area that you answered "no" for question 1. Do not answer question 3 for any fire area that you answered "no" for question 1.

If you answered "yes" for at least one fire area proceed to question 2. If you answered "no" for all four fire areas proceed to question 4.

QUESTION 2: Was the Defendant's negligence a cause of harm to the Plaintiffs

within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES NO _____

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

Santiam Canyon fire

YES NO _____

2 N	8 Y	11 Y	24 Y	32 Y	37 N
44 Y	48 N	61 Y	69 Y	83 Y	96 Y

South Obenchain fire

YES NO _____

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

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242 fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

At least nine of you who answered "yes" to question 1 must also agree on the answer to question 2 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim One is against the plaintiffs for that fire area and for the defendant for that fire area. Please proceed to Question 3.

QUESTION 3: Was the Defendant's negligence a cause of harm to the entire class within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

Santiam Canyon fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

South Obenchain fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

242 fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

At least nine of you who answered "yes" to question 1 must also agree on the answer to question 3 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim One is against a finding of causation as to the entire class for that fire area and for the defendant for that fire area. Please proceed to Question 4, Claim Two, Gross Negligence.

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2 **II. SECOND CLAIM FOR RELIEF: GROSS NEGLIGENCE**

3 **QUESTION 4:** For each fire that you answered “Yes” in response to Question 1,
4 was the Defendant grossly negligent in one or more of the ways the plaintiffs claim as to the
5 Plaintiffs and the entire class within the boundaries of the fire areas below?

6 Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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9 Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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12 South Obenchain fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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15 242 fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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17 *If “yes,” for any of the fire areas go to question 5.*
18 *If “no” for any of the fire areas your verdict on Claim Two is for defendant for that*
19 *fire area. Do not answer question 5 for any fire area that you answered “no” for*
20 *question 4. Do not answer question 6 for any fire area that you answered “no” for*
21 *question 4.*
22 *If you answered “yes” for at least one fire area proceed to question 5. If you*
23 *answered “no” for all four fire areas proceed to question 7.*
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1 **QUESTION 5:** Was the Defendant's gross negligence a cause of harm to the
 2 Plaintiffs within the boundaries of the fire areas below?

3 Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

6 Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

9 South Obenchain fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

12 242 fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

14 *At least nine of you who answered "yes" to question 4 must also agree on the answer*
 15 *to question 5 for that particular fire area.*

16 *If "no" for any of the fire areas your verdict on Claim Two is against the plaintiffs for*
 17 *that fire area and for the defendant for that fire area. Please proceed to Question 6.*

19 **QUESTION 6:** Was the Defendant's gross negligence a cause of harm to the entire
 20 class within the boundaries of the fire areas below?

21 Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

24 Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

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South Obenchain fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

242 fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

At least nine of you who answered "yes" to question 4 must also agree on the answer to question 6 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim Two is against a finding of causation as to the entire class for that fire area and for the defendant for that fire area. Please proceed to Question 7.

ADDITIONAL CLASS QUESTIONS

QUESTION 7: Was the Defendant's conduct reckless as to the Plaintiffs and the entire class within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

Santiam Canyon fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

South Obenchain fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

242 fire

YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

At least nine of you must agree. Please proceed to question 8.

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QUESTION 8: Was the Defendant's conduct willful as to the Plaintiffs and the entire class within the boundaries of the fire areas below?

Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

South Obenchain fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

242 fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

At least nine of you must agree. Please proceed to Question 9, Claim Three, Private Nuisance.

III. THIRD CLAIM FOR RELIEF: PRIVATE NUISANCE

QUESTION 9: Did the Defendant's conduct constitute a private nuisance as to the Plaintiffs and the entire class within the boundaries of the fire areas below?

Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

1 South Obenchain fire YES NO _____

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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4 242 fire YES NO _____

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

6 *If "yes," for any of the fire areas go to question 10.*

7 *If "no" for any of the fire areas your verdict on Claim Three is for defendant for that*

8 *fire area. Do not answer question 10 for any fire area that you answered "no" for*

9 *question 9. Do not answer question 11 for any fire area that you answered "no" for*

10 *question 9.*

11 *If you answered "yes" for at least one fire area proceed to question 10. If you*

12 *answered "no" for all four fire areas proceed to question 12.*

14 **QUESTION 10:** Was the Defendant's private nuisance a cause of harm to the

15 Plaintiffs within the boundaries of the fire areas below?

16 Echo Mountain Complex fire YES NO _____

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

19 Santiam Canyon fire YES NO _____

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

22 South Obenchain fire YES NO _____

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

25 242 fire YES NO _____

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

1 *At least nine of you who answered "yes" to question 9 must also agree on the answer*
2 *to question 10 for that particular fire area.*

3 *If "no" for any of the fire areas your verdict on Claim Three is against the plaintiffs*
4 *for that fire area and for the defendant for that fire area. Please proceed to Question*
5 *11.*

6
7 **QUESTION 11:** Was the Defendant's private nuisance a cause of harm to the entire
8 class within the boundaries of the fire areas below?

9 Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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12 Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

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15 South Obenchain fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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18 242 fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

19
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21 *At least nine of you who answered "yes" to question 9 must also agree on the answer*
22 *to question 11 for that particular fire area.*

23 *If "no" for any of the fire areas your verdict on Claim Three is against a finding of*
24 *causation as to the entire class for that fire area and for the defendant for that fire*
25 *area. Please proceed to Question 12, Claim Four, Public Nuisance.*
26

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3 **IV. FOURTH CLAIM FOR RELIEF: PUBLIC NUISANCE**

4 **QUESTION 12:** Did Defendant's conduct constitute a public nuisance as to the
5 Plaintiffs and the entire class within the boundaries of the fire areas below?

6 Echo Mountain Complex fire YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

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9 Santiam Canyon fire YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

10
11
12 South Obenchain fire YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

13
14
15 242 fire YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

16
17 *If "yes," for any of the fire areas go to question 13.*
18 *If "no" for any of the fire areas your verdict on Claim Four is for defendant for that*
19 *fire area. Do not answer question 13 for any fire area that you answered "no" for*
20 *question 12. Do not answer question 14 for any fire area that you answered "no" for*
21 *question 12.*
22 *If you answered "yes" for at least one fire area proceed to question 13. If you*
23 *answered "no" for all four fire areas proceed to question 15.*
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QUESTION 13:

Was the Defendant's public nuisance a cause of harm to the

Plaintiffs within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES

NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

Santiam Canyon fire

YES

NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

South Obenchain fire

YES

NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

242 fire

YES

NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

At least nine of you who answered "yes" to question 12 must also agree on the answer to question 13 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim Four is against the plaintiffs for that fire area and for the defendant for that fire area. Please proceed to Question 14.

QUESTION 14:

Was the Defendant's public nuisance a cause of harm to the entire

class within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES

NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

Santiam Canyon fire

YES

NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

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South Obenchain fire

YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

242 fire

YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

At least nine of you who answered "yes" to question 12 must also agree on the answer to question 14 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim Four is against a finding of causation as to the entire class for that fire area and for the defendant for that fire area. Please proceed to Question 15, Claim Five, Trespass.

V. FIFTH CLAIM FOR RELIEF: TRESPASS

QUESTION 15: Did the Defendant's conduct constitute a trespass as to the Plaintiffs and the entire class within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

Santiam Canyon fire

YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 N
44 Y	48 N	61 Y	69 Y	83 Y	96 Y

South Obenchain fire

YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

242 fire

YES NO

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

If "yes," for any of the fire areas go to question 16.

1 If "no" for any of the fire areas your verdict on Claim Five is for defendant for that
 2 fire area. Do not answer question 16 for any fire area that you answered "no" for
 3 question 15. Do not answer question 17 for any fire area that you answered "no" for
 4 question 15.

5 If you answered "yes" for at least one fire area proceed to question 16. If you
 6 answered "no" for all four fire areas proceed to question 18.

7 **QUESTION 16:** Was the Defendant's trespass a cause of harm to the Plaintiffs
 8 within the boundaries of the fire areas below?

9 Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

12 Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	Y

15 South Obenchain fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

18 242 fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

21 At least nine of you who answered "yes" to question 15 must also agree on the
 22 answer to question 16 for that particular fire area.

23 If "no" for any of the fire areas your verdict on Claim Five is against the plaintiffs
 24 for that fire area and for the defendant for that fire area. Please proceed to Question
 25 17.
 26

1 **QUESTION 17:** Was the Defendant's trespass a cause of harm to the entire class
 2 within the boundaries of the fire areas below?

3 Echo Mountain Complex fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

6 Santiam Canyon fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	N
44	48	61	69	83	96
Y	N	Y	Y	Y	X

9 South Obenchain fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

12 242 fire YES NO

2	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

14 *At least nine of you who answered "yes" to question 15 must also agree on the
 15 answer to question 17 for that particular fire area.*

16 *If "no" for any of the fire areas your verdict on Claim Five is against a finding of
 17 causation as to the entire class for that fire area and for the defendant for that fire
 18 area. Please proceed to Question 18, Claim Six, Inverse Condemnation.*

22 **VI. SIXTH CLAIM FOR RELIEF: INVERSE CONDEMNATION**

23 **QUESTION 18:** Did the Defendant's conduct constitute an intentional taking under
 24 authority of law (referred to as "inverse condemnation") of the property or portions of property
 25 of the Plaintiffs and the entire class within the boundaries of the fire areas below?
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Echo Mountain Complex fire

YES _____ NO

2	8	11	24	32	37
N	N	N	N	Y	N
44	48	61	69	83	96
N	N	N	N	Y	N

Santiam Canyon fire

YES _____ NO

2	8	11	24	32	37
N	N	N	N	Y	N
44	48	61	69	83	96
N	N	N	N	Y	N

South Obenchain fire

YES _____ NO

2	8	11	24	32	37
N	N	N	N	Y	N
44	48	61	69	83	96
N	N	N	N	Y	N

242 fire

YES _____ NO

2	8	11	24	32	37
N	N	N	N	Y	N
44	48	61	69	83	96
N	N	N	N	Y	N

If "yes," for any of the fire areas go to question 19.

If "no" for any of the fire areas your verdict on Claim Six is for defendant for that fire area. Do not answer question 19 for any fire area that you answered "no" for question 18. Do not answer question 20 for any fire area that you answered "no" for question 18.

If you answered "yes" for at least one fire area proceed to question 19. If you answered "no" for all four fire areas proceed to question 21.

QUESTION 19: Was the Defendant's inverse condemnation a cause of harm to the Plaintiffs within the boundaries of the fire areas below?

Echo Mountain Complex fire

YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

Santiam Canyon fire

YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

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South Obenchain fire YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

242 fire YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

At least nine of you who answered "yes" to question 18 must also agree on the answer to question 19 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim Six is against the plaintiffs for that fire area and for the defendant for that fire area. Please proceed to Question 20.

QUESTION 20: Was the Defendant's inverse condemnation a cause of harm to the entire class within the boundaries of the fire areas below?

Echo Mountain Complex fire YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

Santiam Canyon fire YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

South Obenchain fire YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

242 fire YES _____ NO _____

2	8	11	24	32	37
44	48	61	69	83	96

At least nine of you who answered "yes" to question 18 must also agree on the answer to question 20 for that particular fire area.

1 If "no" for any of the fire areas your verdict on Claim Six is against a finding of
2 causation as to the entire class for that fire area and for the defendant for that fire
3 area. Please proceed to the instructions below and Question 21.
4

5 **CLASS REPRESENTATIVE PLAINTIFFS' INDIVIDUAL DAMAGES**

6 If you answered "yes" to question 2, question 5, question 10, question 13, or question
7 16 for some or all of the four fire areas, or if all were answered "yes", please proceed to
8 question 21 and answer the plaintiffs' individual damages questions for any fire area to
9 which you answered "yes" for question 2, question 5, question 10, question 13, or question
10 16. At least nine of you who agreed to those answers for a particular fire area, must also
11 agree on your answers to question 21 and question 22 for the same fire area.

12 If you did not answer "yes" to question 2, question 5, question 10, question 13, and
13 question 16 for a particular fire area then your verdict is against plaintiffs for that fire area
14 and for the defendant for that particular fire area. Do not answer questions 21 or question
15 22 for that particular fire area. Otherwise, please proceed to question 21.

16 **PLAINTIFFS' INDIVIDUAL DAMAGES – FIRST, SECOND, THIRD, FOURTH, AND**
17 **FIFTH CLAIMS FOR RELIEF**

18 **QUESTION 21:** What amount of economic damages, if any, do you award each
19 of the following Plaintiffs?
20

21

Plaintiffs within the boundaries of the Echo Mountain Complex fire area	Economic Damages
James Holland (Echo)	\$ 404,884.00
Rachelle McMaster (Echo)	\$ 147,160.00
Kevin Stockton (Echo)	\$ 96,521.50
Shariene Stockton (Echo)	\$ 96,521.50

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26

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

Plaintiffs within the boundaries of the Santiam Canyon fire area	Economic Damages
Robin Colbert (Santiam)	\$19,654.00
Jane Drevo (Santiam)	\$493,882.00
Sam Drevo (Santiam)	\$85,295.00
Brooke Edge (Santiam)	\$224,240.00
Bill Edge (Santiam)	\$224,240.00
Lori Fowler (Santiam)	\$35,412.60
Iris Hampton (Santiam)	\$536,776.00
Jeanyne James (Santiam)	\$485,408.93
Kristina Montoya (Santiam)	\$119,004.00
Northwest River Guides, LLC (Santiam)	\$330,000.00

2 N	8 Y	11 Y	24 Y	32 Y	37 N
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

Plaintiffs within the boundaries of the South Obenchain fire area	Economic Damages
Victor Palfreyman (South Obenchain)	\$20,000.00
Palfreyman Family Trust (South Obenchain)	\$1,000,000.00

2 N	8 Y	11 Y	24 Y	32 Y	37 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

Plaintiffs within the boundaries of the 242 fire area	Economic Damages												
Duane Brunn (242)	\$56,187.00												
<table border="1"> <tr> <td>2N</td><td>8Y</td><td>11Y</td><td>24Y</td><td>32Y</td><td>37N</td> </tr> <tr> <td>44Y</td><td>48Y</td><td>61Y</td><td>69Y</td><td>83Y</td><td>96Y</td> </tr> </table>	2N	8Y	11Y	24Y	32Y	37N	44Y	48Y	61Y	69Y	83Y	96Y	
2N	8Y	11Y	24Y	32Y	37N								
44Y	48Y	61Y	69Y	83Y	96Y								

Please proceed to Question 22.

QUESTION 22: What amount of noneconomic damages, if any, do you award each of the following Plaintiffs?

Plaintiffs within the boundaries of the Echo Mountain Complex fire area	Non-Economic Damages												
James Holland (Echo)	\$4,500,000.00												
Rachelle McMaster (Echo)	\$4,500,000.00												
Kevin Stockton (Echo)	\$4,500,000.00												
Shariene Stockton (Echo)	\$3,000,000.00												
<table border="1"> <tr> <td>2N</td><td>8Y</td><td>11Y</td><td>24Y</td><td>32Y</td><td>37Y</td> </tr> <tr> <td>44Y</td><td>48Y</td><td>61Y</td><td>69Y</td><td>83Y</td><td>96Y</td> </tr> </table>	2N	8Y	11Y	24Y	32Y	37Y	44Y	48Y	61Y	69Y	83Y	96Y	
2N	8Y	11Y	24Y	32Y	37Y								
44Y	48Y	61Y	69Y	83Y	96Y								

Plaintiffs within the boundaries of the Santiam Canyon fire area	Non-Economic Damages
Robin Colbert (Santiam)	\$4,500,000.00
Jane Drevo (Santiam)	\$4,500,000.00
Sam Drevo (Santiam)	\$4,500,000.00
Brooke Edge (Santiam)	\$4,500,000.00

1	Bill Edge (Santiam)	\$4,500,000.00
2	Lori Fowler (Santiam)	\$4,500,000.00
3	Iris Hampton (Santiam)	\$4,500,000.00
4	Jeanyne James (Santiam)	\$4,500,000.00
5	Kristina Montoya (Santiam)	\$3,000,000.00
6	Northwest River Guides, LLC (Santiam)	Ø

7	2 N	8 Y	11 Y	24 Y	32 Y	37 Y
8	44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

10	Plaintiffs within the boundaries of the	Non-Economic Damages
11	South Obenchain fire area	
12	Victor Palfreyman (South Obenchain)	\$4,500,000.00
13	Palfreyman Family Trust (South Obenchain)	\$4,500,000.00

14	2 N	8 Y	11 Y	24 Y	32 Y	37 Y
15	44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

17	Plaintiffs within the boundaries of the	Non-Economic Damages
18	242 fire area	
19	Duane Brunn (242)	\$3,000,000.00

20	2 N	8 Y	11 Y	24 Y	32 Y	37 Y
21	44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

23 *Please proceed to the instructions below and Question 23.*

1 **PLAINTIFFS' INDIVIDUAL DAMAGES – SIXTH CLAIM FOR RELIEF INVERSE**
 2 **CONDEMNATION**
 3

4 *If you answered “yes” to question 19, for some or all of the four fire areas, please*
 5 *proceed to question 23 and answer the plaintiffs’ individual damages questions for any fire*
 6 *area to which you answered “yes” for question 19. At least nine of you who agreed to those*
 7 *answers for a particular fire area, must also agree on your answers to question 23 for the*
 8 *same fire area.*

9 *If you did not answer “yes” to question 19, for a particular fire area then your*
 10 *verdict is against plaintiffs for that fire area and for the defendant for that particular fire*
 11 *area. Do not answer questions 23 for that particular fire area. Otherwise, please proceed to*
 12 *question 23.*

13 **QUESTION 23:** What amount of just compensation, if any, do you award each of
 14 the following Plaintiffs?
 15

Plaintiffs within the boundaries of the Echo Mountain Complex fire area	Just Compensation					
James Holland (Echo)						
Rachelle McMaster (Echo)						
Kevin Stockton (Echo)						
Shariene Stockton (Echo)						
2	8	11	24	32	37	
44	48	61	69	83	96	

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Plaintiffs within the boundaries of the Santiam Canyon fire area	Just Compensation
Robin Colbert (Santiam)	
Jane Drevo (Santiam)	
Sam Drevo (Santiam)	
Brooke Edge (Santiam)	
Bill Edge (Santiam)	
Lori Fowler (Santiam)	
Iris Hampton (Santiam)	
Jeanyne James (Santiam)	
Kristina Montoya (Santiam)	
Northwest River Guides, LLC (Santiam)	

2	8	11	24	32	37
44	48	61	69	83	96

Plaintiffs within the boundaries of the South Obenchain fire area	Just Compensation
Victor Palfreyman (South Obenchain)	
Palfreyman Family Trust (South Obenchain)	

2	8	11	24	32	37
44	48	61	69	83	96

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Plaintiffs within the boundaries of the 242 fire area					Just Compensation	
Duane Brunn (242)						
2	8	11	24	32	37	
44	48	61	69	83	96	

You are now done with this form. Your presiding juror should sign this verdict form and notify the clerk.

Dated: 6/9/23

#69 ES
Presiding Juror Number and Initials