

CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

STATE FARM FIRE AND CASUALTY
COMPANY, and STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

Plaintiffs,

v.

PACIFICORP, an Oregon corporation dba
PACIFIC POWER, and DOES 1 through 50,
inclusive,

Defendants.

Case No.

COMPLAINT

- 1. Negligence;**
- 2. Gross Negligence;**
- 3. Inverse Condemnation**

Fee Authority: ORS 21.160(1)(e)

Prayer Amount: Not More than \$11,000,000

Not Subject to Mandatory Arbitration

Jury Trial Demanded

Subrogation Plaintiffs State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company (collectively “Plaintiffs”) hereby bring the following Complaint for damages against Defendants PacifiCorp, an Oregon corporation dba Pacific Power (“Pacific Power”) and Does 1 through 50 (collectively “Defendants”) as a result of the damages that Plaintiffs sustained in the Echo Mountain Fire and the Kimberling Fire (collectively, the “Echo Mountain Complex” or the “Fire”) that began on September 7, 2020.¹

INTRODUCTION

1.

The Echo Mountain Complex began at two areas of origin on Labor Day, September 7, 2020, in the community of Otis, approximately four miles east of Lincoln City, Oregon.

The Fire occurred when transmission and distribution power lines owned, operated, and

¹ Although the Echo Mountain Fire and Kimberling Fire did not merge, the Oregon Department of Forestry has referred to both fires collectively as the Echo Mountain Complex.

1 maintained by the Pacific Power, ignited surrounding vegetation at each of the two areas of
2 origin, causing a blaze that raced northeast to southwest diagonally through the Salmon River
3 canyon at alarming speeds, with embers landing as far west as the Chinook Winds golf course
4 on the edge of Lincoln City.² The Fire caused evacuations, power outages, road closures,
5 uncertainty, fear, and destroyed approximately 2,500 acres, 288 homes, and damaged many
6 other structures.³ This suit is a subrogation action seeking redress for property damage, loss of
7 use, and other related losses resulting from the Fire. The image below depicts the Fire's
8 perimeter.



2.

At all relevant times, Plaintiff State Farm Fire and Casualty Company was and is duly licensed to conduct business in the State of Oregon as an insurance company.

3.

At all relevant times, Plaintiff State Farm Mutual Automobile Insurance Company was and is duly licensed to conduct business in the State of Oregon as an insurance company.

² The power lines discussed herein are owned, operated, and maintained by PacifiCorp and Pacific Power, or maintained under contract with the Doe Defendants, and are often referenced throughout this Complaint as “Pacific Power’s Power Lines.”

³ For descriptions of acreage and structures affected, see, e.g., <https://inciweb.nwcg.gov/incident/7179/>; see also <https://www.oregoncoast.org/blog/reflecting-on-echo-mountain-fire/>

1 4.

2 At all relevant times, Defendant PacifiCorp was an Oregon corporation and regulated
3 electric utility, conducting business under the assumed business name of Pacific Power with
4 its primary place of business located at 825 NE Multnomah Street, Suite 2000, Portland,
5 Oregon 97232.

6 5.

7 Defendants Does 1 through 50, and each of them, are as yet unknown to Plaintiffs, who
8 therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe,
9 and thereon allege, that each of the Defendants designated herein as Doe is legally responsible
10 in some manner for the events and happenings referred to herein. Plaintiffs will ask leave to
11 amend this Complaint when the true names and capacities of Defendants sued as Does 1
12 through 50 are ascertained.

13 **JURISDICTION AND VENUE**

14 6.

15 This Court has jurisdiction over this matter pursuant to ORCP 4 because Defendants
16 are corporations created by or under the laws of this State and are engaged in substantial and
17 not isolated activities within this State.

18 7.

19 Venue is proper in this Court because a significant portion of the events described
20 herein, as well as the injuries to real and personal property, occurred in Lincoln County,
21 Oregon.

22 **COMMON ALLEGATIONS**

23 8.

24 At all relevant times, Pacific Power were and are in the business of providing electricity
25 to Oregon residents, businesses, and properties therein, including Plaintiffs' insureds, through
26 ///

1 their electrical distribution system network, including electrical transmission and distribution
2 power lines.

3 9.

4 At all relevant times, Pacific Power installed, constructed, built maintained, and/or
5 operated overhead power lines, together with supporting poles and appurtenances (collectively
6 the “Powerlines”), for the transmission of electricity to members of the general public. Further,
7 Pacific Power has been granted the power of eminent domain, by statute, to take property for
8 such public use that arises from its role as a public utility.

9 10.

10 Pacific Power owned, operated, or maintained the Powerlines throughout Lincoln
11 County, including in the areas of origin for the Echo Mountain Fire and Kimberling Fire.

12 11.

13 On August 20, 2020, a statewide State of Emergency was declared due to the imminent
14 threat of wildfire.⁴

15 12.

16 On September 3, 2020, the Lincoln County Fire Defense Board issued a media release
17 announcing a burn ban due to the extremely high fire danger, with lower-than-normal moisture
18 levels along with forecasted hotter and dryer weather compounding the danger.

19 13.

20 The National Weather Service warned on September 6, 2020, that critical fire weather
21 would blow in the following day, with easterly winds gusting in excess of 50 mph and relative
22 humidity dropping below 20%. These are extremely dangerous and foreseeable wildfire
23 conditions.

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26 _____
⁴ Or. Exec. Order No. 20-35 (Aug. 20, 2020),
https://www.oregon.gov/gov/Documents/executive_orders/eo_20-35.pdf

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14.

Throughout the day and evening of September 7, 2020, the National Weather Service warned that Oregon would experience a severe wind event, with strong easterly winds likely to develop in the evening. Oregon was already in the midst of severe drought conditions, and numerous other wildfires had erupted throughout Oregon since the beginning of fire season.

15.

A red flag warning, signifying extreme fire danger, was effective for the area surrounding the Fire’s areas of origin beginning 11:00 am on September 7, 2020, through 8:00 pm on September 9, 2020. The statement included references to forecasted strong, gusty winds along with relative low humidity. The area was already in extreme fire danger.

16.

The forecasted weather arrived on September 7, 2020. The red flag warning for Lincoln County remained in place due to critical fire weather, dry wildland fuels, and potential for dangerous wildfire from any spark.

17.

Pacific Power’s electrical distribution system, including but not limited to electrical facilities, Powerlines, conductors, power poles, insulators, reclosers, transformers, conductors, and all other electrical equipment (collectively “Electrical System”), are inherently dangerous and hazardous instrumentalities, of which Pacific Power knows. The transmission and distribution of electricity requires Pacific Power to exercise an increased level of care commensurate with and proportionate to the increased risk of danger associated with its electrical distribution system.

18.

Despite the National Weather Service forecasts, and the warnings by the Lincoln County Sheriff’s Department, Pacific Power did not de-energize its Powerlines prior to the

///

1 severe wind event. Trees and limbs fell onto Pacific Power's Powerlines, resulting in power
2 outages.

3 19.

4 Pacific Power thereafter negligently and improperly re-energized its Powerlines
5 without ensuring the Powerlines were clear of or had not come into contact with trees or other
6 surrounding vegetation.

7 20.

8 Plaintiffs allege that the Fire was caused by negligent and improper maintenance,
9 inspection, ownership, and operation of the Powerlines and surrounding vegetation owned,
10 operated, and maintained by Pacific Power.

11 21.

12 Pacific Power had a duty to properly maintain and ensure their safe operation of its
13 Electrical System, including but not limited to adequately designing, constructing, monitoring,
14 maintaining, operating, repairing, replacing, or improving same.

15 22.

16 Pacific Power has a non-transferable, non-delegable duty to perform vegetation
17 management in compliance with federal and state regulations and permits, which includes
18 keeping vegetation properly trimmed at a safe distance so as to prevent foreseeable contact
19 with its Electrical System. This duty also included inspecting and managing vegetation around
20 its Electrical System during and after a severe wind event, given the foreseeable risk of
21 vegetation coming into contact with Pacific Power's Electrical System and starting fires.

22 23.

23 Even though Pacific Power knew that its Electrical System or portions thereof were old
24 and aging, unsafe, or vulnerable to weather and environmental conditions, it failed to fulfill these
25 duties and failed to take preventative measures in the face of known high-risk weather conditions.

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24.

Pursuant to their policies of insurance, Plaintiffs’ insureds made claims to Plaintiffs seeking indemnification and reimbursement for damages resulting from the Fire.

25.

Plaintiffs have incurred damages as a result of the Fire.

26.

In consideration of Plaintiffs’ payments of their insureds’ damages resulting from the Fire, Plaintiffs are subrogated to all rights, claims, and interests that the policyholders may have against any person or entity that may be liable for causing the reimbursed damages that resulted from the Fire.

FIRE ORIGINS

27.

In the late evening of September 7, 2020, Pacific Power’s Powerlines failed, causing surrounding vegetation to ignite near or between mile markers 7 and 8 along Oregon Hwy. 18, in the community of Otis, approximately four miles from Lincoln City, Oregon. This ignition is the Echo Mountain Fire origin.

28.

The Echo Mountain Fire ignited due to Pacific Power’s failure to properly maintain its Powerlines and surrounding vegetation, maintain tension, or de-energize its Powerlines.

29.

During the evening of September 7, 2020, near the Echo Mountain Fire origin, the power went out. This was not the result of Pacific Power’s decision to de-energize Powerlines following the ignition of the Echo Mountain Fire, but rather the severe wind event warned by the National Weather Service.

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30.

During the evening of September 7, 2020, residents reported their power flickering on and off as Pacific Power attempted to re-energize its Powerlines.

31.

Prior to this attempt to re-energize, Pacific Power failed to ensure its Powerlines had not fallen to the ground as a result of the severe high winds or had come in contact with vegetation near the Powerlines.

32.

Also during the evening of September 7, 2020, Pacific Power’s Powerlines failed near mile markers 3 and 4 on Oregon Hwy. 18, causing surrounding vegetation to ignite. This ignition was the Kimberling Fire origin.

33.

The Echo Mountain Complex raged for nearly a month, destroying homes and structures and covering the area with debris. The Fire was contained on or about September 30, 2020. The devastation was so extensive that one year later, as of mid-September 2021, debris removal was only around 90 percent complete.⁵

FIRST CLAIM FOR RELIEF
(Negligence Against All Defendants)

34.

Plaintiffs re-incorporate and re-allege each of the foregoing paragraphs as though fully set forth herein.

35.

At all times relevant, it was the duty of Defendants to use reasonable care to avoid exposing Plaintiffs’ insureds’ property to a foreseeable risk of harm and each of them failed to do so.

⁵ See, e.g., <https://www.klcc.org/disasters-accidents/2021-09-29/one-year-later-signs-of-life-in-community-scarred-by-echo-mountain-fire>

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36.

Defendants had a non-delegable duty of vigilant oversight in the maintenance, use, operation, repair, and inspection that is appropriate to the changing conditions and circumstances of its Electrical System.

37.

Prior to the Fire’s ignition, Defendants knew or should have known that its Electrical System, including the Powerlines, was subject to a foreseeable risk for fire that was particular to the operation of its business and arose from the nature and/or location of its Electrical System.

38.

Notwithstanding the above, Defendants failed to take reasonable precautions to protect Plaintiffs’ insureds from the foreseeable risk of harm created by trees and vegetation near its Electrical System. A reasonable person in the position of Defendants would have recognized the necessity of taking special precautions to protect Plaintiffs’ insureds against the risk of harm created by its Electrical System.

39.

Defendants, and each of them, had the special knowledge and expertise required to design, engineer, construct, use, operate, inspect, repair, and maintain the Electrical System to assure safety under all the local conditions in its service areas, including but not limited to those conditions identified above.

40.

Defendants breached these duties by, among other things:

- (a) Failing to conduct reasonable prompt, proper and frequent inspections of the Electrical System;
- (b) Failing to design, construct, monitor, and maintain its high voltage transmission and distribution Powerlines in a manner that avoids igniting fires;

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1 (c) Failing to inspect, repair or maintain equipment to prevent its Powerlines
2 from igniting fires;

3 (d) Failing to ensure trees in the area of its Powerlines were healthy, safe and
4 would not fall onto, break, uproot or make contact with Defendants' Electrical System
5 during a high wind event;

6 (e) Failing to remove, prune or trim trees and vegetation in the area of its
7 Powerlines that were at risk of falling into, breaking on, uprooting or making contact
8 with Defendants' Electrical System during a high wind event;

9 (f) Failing to keep the Electrical System in a safe condition at all times to
10 prevent fire;

11 (g) Failing to adequately inspect, trim, prune or remove vegetation and
12 undergrowth in proximity to the energized Electrical System;

13 (h) Failing to de-energize the Powerlines during fire-prone conditions;

14 (i) Failing to de-energize the Powerlines after a fire's ignition;

15 (j) Failing to properly inspect downed or unintentionally de-energized
16 Powerlines prior to re-energizing those Powerlines to ensure that lines were not
17 compromised or in contact with combustible vegetation;

18 (k) Failing to properly investigate, vet, hire, train, and supervise employees
19 and/or agents responsible for maintenance and inspection of the Electrical System;

20 (l) Failing to properly investigate, monitor, and maintain vegetation and
21 undergrowth sufficient to mitigate the risk of fire; and

22 (m) Failing to implement a Public Safety Power Shutoff Plan.

23 41.

24 As a direct and proximate result of Defendants' negligence, Plaintiffs' insureds
25 sustained damage to their real and personal property.

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42.

As a result of this loss, Plaintiffs’ insureds made claims to Plaintiffs, who in turn issued payments pursuant to their insureds’ insurance policies.

43.

As a direct and proximate result, Plaintiffs have incurred damages in an amount to be proven at trial but currently estimated at \$10,500,857.98.

SECOND CLAIM FOR RELIEF
(Gross Negligence Against All Defendants)

44.

Plaintiffs incorporate and re-allege each of the foregoing paragraphs as though fully set forth herein.

45.

Defendants’ failure to take reasonable precautions following warnings by the Lincoln County Fire Defense Board and National Weather Service constituted gross negligence in the form of a willful, wanton, and reckless disregard of known risks to the public. Such disregard and indifference of public safety was willful, wanton, and reckless by the conscious, knowing, and disdainful nature for the serious risks created by Defendants’ activities, which Oregon courts define as gross negligence.

46.

Defendants’ conduct evidences a willful, wanton, and reckless disregard of risk and/or substantial risk of harm to others and the general public as reflected by, among other things:

- (a) Re-energizing the Powerlines brought down by vegetation in a windstorm without conducting the required and necessary inspections;
- (b) Failing to maintain appropriate tension on the Powerlines to avoid arcing and wildfire in high wind conditions;
- (c) Failing to implement a Public Safety Power Shutoff Plan;

- 1 (d) Failing to de-energize the Powerlines during fire-prone conditions;
2 (e) Failing to de-energize the Powerlines after a fire's ignition; and
3 (f) Failing to inspect, repair and/or maintain equipment to prevent the
4 Powerlines from igniting fires.

5 47.

6 As a direct and proximate result of Defendants' negligence, Plaintiffs' insureds
7 sustained damage to their real and personal property, which damages, pursuant to
8 ORS 477.089(2)(b), are subject to doubling owing to Defendants' recklessness, gross
9 negligence, willfulness, and/or malice.

10 48.

11 As a result of this loss, Plaintiffs' insureds made claims to Plaintiffs, who in turn issued
12 payments pursuant to their insureds' insurance policies.

13 49.

14 As a direct and proximate result, Plaintiffs incurred damages in an amount to be proven
15 at trial in an amount to be proven at trial but currently estimated at \$10,500,857.98.

16 **THIRD CLAIM FOR RELIEF**

17 **(Inverse Condemnation Against All Defendants)**

18 50.

19 Plaintiffs incorporate and re-allege each of the foregoing paragraphs as though fully set
20 forth herein.

21 51.

22 Plaintiffs bring this cause of action for inverse condemnation against all Defendants.

23 52.

24 Defendants' operation and maintenance of the Electrical System, which was a
25 substantial cause of Plaintiffs' damages, is a public improvement for a public use under
26 Oregon law.

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53.

Article XI, Section 4 of the Oregon Constitution provides:

No person’s property shall be taken by any corporation under authority of law, without compensation first being made, or secured in such manner as may be prescribed by law.

54.

Defendants are each a “corporation” within the meaning of Article XI, Section 4.

55.

By causing the Echo Mountain Complex, the Defendants took Plaintiffs’ insureds’ property, without compensation, and by means other than eminent domain or any other authority of law.

56.

Article I, Section 18 of the Oregon Constitution provides:

Private property shall not be taken for the public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use.

57.

The Defendants’ design, development, construction, installation, control, management, maintenance, inspection, ownership, and operation of its Electrical System and the Powerlines constitutes a public improvement for a public use.

58.

The damages resulting from the Echo Mountain Complex were the necessary, certain, predictable, or inevitable consequence of actions or omissions taken by the Defendants that caused the fires and/or were the natural and ordinary result of such actions or omissions.

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59.

In the Echo Mountain Complex, the Defendant’s Electrical System and Powerlines substantially caused Plaintiffs’ damages pursuant to a “public use” as defined by Oregon law. Property that is taken in connection with the operation of a utility, whether or not it is a result of intentional operations or negligent practices, is property that is taken for a “public use.” The property damaged by Defendants by and through the Echo Mountain Complex was thereby taken for a public use.

60.

Electricity is a dangerous instrumentality that poses an inherent risk that requires the exercise of increased care and precaution commensurate with and proportionate to that increased danger so as to make the transport of electricity through the Electrical System safe under all circumstances and exigencies posed by the surrounding weather and vegetation to ensure maximum safety under all local conditions in the service area, including the risk of fire.

61.

Defendants operated a public utility with the power eminent domain under Oregon law, constituting the use of land for a public use. These Defendants operated their power grid in a defective manner, which damaged the private property of Plaintiffs’ insureds, in a manner that was the necessary, substantially certain, or inevitable consequences of Defendants business practices and/or policies employed in the operation of their Electrical System for a public use.

62.

Defendants have a non-delegable duty to maintain and upkeep its Electrical System, which includes vegetation management around its Electrical System. The inherent danger in Defendants failing to maintain and continuously upkeep the surrounding vegetation around its Electrical System ultimately resulted in the Echo Mountain Complex and damaged Plaintiffs’ insureds’ property.

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63.

The injury to Plaintiffs’ insureds’ property was the inescapable and unavoidable consequences of Defendants’ Electrical System as deliberately designed, constructed and maintained. This damage was the necessary and probable result of Defendants’ public improvement supplying electricity.

64.

As an actual result of Defendants’ aforementioned acts and/or omissions, Plaintiffs’ insureds’ were permanently deprived of the use and enjoyment of their property. As a direct result of the taking of the property, Plaintiffs paid their insureds in an amount to be proven at trial.

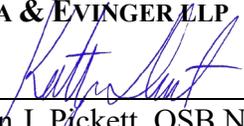
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs State Farm Fire and Casualty Company and State Farm Mutual Automobile Insurance Company pray for judgment against Defendants Pacific Power, dba PacifiCorp, and Does 1 through 50, and each of them as set forth below.

- A. For monetary damages in an amount to be proven at trial;
- B. For prejudgment interest where allowable by law;
- C. For post judgment interest;
- D. For attorney’s fees and costs of suit where allowable by law; and
- E. For such other relief as the Court deems just and proper.

DATED: February 4, 2022

**GROTEFELD HOFFMANN GORDON
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