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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	
Application of Rocky Mountain Power for a Deferred Accounting Order	Docket No. 23-035-30 Position Statement

Pursuant to Utah Code § 54-10a-303, UTAH ADMIN. CODE r. 746-1, and the Public Service Commission of Utah’s (“PSC”) July 17, 2023, Scheduling Order, the Office of Consumer Services (“OCS”) submits this Position Statement concerning the procedures the PSC should follow considering PacifiCorp’s argument that the PSC continue the Scheduling Conference and refrain from further action in this docket for a period of six months. The OCS’s position is that the Company’s application is not ripe. Accordingly, no schedule should be set, and PacifiCorp’s application should be dismissed without prejudice giving PacifiCorp the opportunity to resubmit when, and if, PacifiCorp’s claim to an entitlement to a deferred accounting order becomes ready for litigation and decision.

POSITION STATEMENT

PacifiCorp seeks a deferred accounting order to record a regulatory asset to track “incremental cost associated with third-party liability due to wildfires in Oregon.” Application at

pg. 1. The Application stems from a verdict in *James v. PacifiCorp*, No. 20-CV-33885 (Cir. Ct. Multnomah County, Jun. 12, 2023), a class action bifurcated into two phases. In the first phase, a jury determined PacifiCorp’s liability and the damages of seventeen representative plaintiffs. Plaintiffs’ Motion for Issues Class Certification at pg. 4. (Exh. “A”);¹ Final Verdict pg. 17-20 (Exh. “B.”) In the second phase, damages will be determined for the approximate 2,437 remaining plaintiffs in the class. In June of 2023, a jury returned a verdict in the first phase of the proceedings finding PacifiCorp acted with negligence, gross negligence, recklessness, and willfulness in starting and responding to wildfires that spread across Oregon in early September 2020. Application at ¶¶ 3, 6; Final Verdict at pg. 1-7 (Exh. “B.”)

Even though the plaintiffs only sought recovery for property damages, the jury awarded the damages to the seventeen representative plaintiffs of “over \$70 million in economic and non-economic damages and over \$18 million in punitive damages.” Application at ¶ 6. The amount of damages for the remaining 2,437 plaintiffs as well as the potential liability regarding other lawsuits stemming from the Oregon fires remain outstanding. Application at ¶ 9. Because of these facts, “PacifiCorp requests that the Commission delay consideration of the approval of this deferral application until the costs and the impact on the financial stability of the Company are more fully known.” Application at ¶ 6.

In fact, the application repeatedly asserts that liability, and the amount of damages is yet to be determined.

¹ Although no scheduling order has been entered in this case, PacifiCorp graciously agreed to respond to discovery requests to provide material in addition to the application, including pleadings in class action, to facilitate the filing of the instant Position Statement.

The Company maintains that its actions were appropriate, consistent with prudent utility practice, and as such, plans to appeal the verdict. While the Company files this deferral, there is still significant uncertainty about the legal outcome of these cases.

....

At this time, due to the nature of the litigation it is difficult to precisely estimate the amounts that will be recorded in this deferral account. However, in a single proceeding in Oregon, a jury has issued a verdict for more than \$90 million for the named plaintiffs in the case. Additional process regarding the class action aspect of the lawsuit and the Company's appeals of the proceeding, along with additional ongoing proceedings are expected to result in a materially different amount.

Application at ¶¶ 6, 9. Accordingly, the application itself asserts that PacifiCorp's liability for the third-party claims has yet to be determined and the financial impact on PacifiCorp if the liability is found to exist remains unclear. This is an admission that the application is not ripe. According to the Application, if PacifiCorp succeeds in its appeals there will be no costs to defer. Application at ¶ 6.

Moreover, in response to discovery requests seeking information on when PacifiCorp would start deferred accounting for third-party liability if the application is approved, PacifiCorp replied: "The determination to record the deferral could occur at the conclusion of the appeal, but at the latest, at the time of payment." OCS Data Response 1.9 (Exh. "C.") Therefore, PacifiCorp does not intend to start deferring cost until after an appeal is perfected, briefed, argued, and decided. As the PSC is undoubtedly aware, a decision on appeal is not going to occur within in the six months that PacifiCorp seeks to delay procedures in this docket, a decision on appeal is very likely to take over a year or perhaps longer. Thus, the six-month delay PacifiCorp seeks is not related to the time they plan to record the deferral. Nor is it related to the time in which liability will finally be decided. Therefore, not only is the application not ripe now but it is not likely to be ripe

after the six months PacifiCorp seeks to delay these proceedings. This confusion is further evidence that the application is not presently ready to proceed.

Nevertheless, allowing the opening of a docket for a deferred accounting order now has substantive impact. The PSC's litigated deferred accounting rulings² provide that an order for a deferred accounting should only be issued "if there is a probability of future recovery. If future recovery is not likely, no accounting order need issue . . ." Grid West Order at 16.³ It follows "that authorization of an accounting order for a particular expense is an indication, if but an early tentative one, that there is a likelihood that the particular expense can be included in a future revenue requirement determination." *Id.* at 16-17. Accordingly, allowing this docket to be instigated now is an indication that PacifiCorp believes not only that they are entitled to defer the costs of third-party liability, but that PacifiCorp believes that they can likely pass on the staggering cost of this liability to ratepayers.

Given the facts that PacifiCorp requests that no action be taken in the docket for a period of six months; the application, on its face, contains admissions that the application is not ripe; the requested delay is not related to the timing deferral or the fixing of liability; and the request for

² In *Mountain Power for an Accounting Order for Settlement Charges Related to its Pension Plans*, Docket No. 18-035-48, Order at 5 & n.2 (Utah P.S.C., May 22, 2019) ("Pension Order") the PSC noted that most of its rulings granting a deferred accounting order were in dockets that were resolved through settlements where all parties agreed to the accounting order and therefore these cases do not constitute precedent for litigated dockets where some parties contest whether a deferred accounting order should be issued.

³ The PSC issued the "Grid West Order" from three dockets consolidated for the purpose of decision and can be found at *In the Matter of the Application of Rocky Mountain Power, a Division of PacifiCorp, for a Deferred Accounting Order To Defer the Costs of Loans Made to Grid West, the Reginal Transmission Organization; In the Matter of the Application of Rocky Mountain Power for an Accounting Order To Defer the Cost Related to the MidAmerican Energy Holdings Company; In the Matter of the Application of Rocky Mountain Power for an Accounting Order for Costs related to the Flooding of the Powerdale Hydro Facility*, Docket No's 06-035-163, 07-035-04, 07-035-14, Report and Order (Utah P.S.C., January 3, 2008) ("Grid West Order").

an deferral conveys the assertion that PacifiCorp believes they are likely to recover the costs from ratepayers—PacifiCorp’s motivation for filing at the present time is in question. Rather than initiating proceedings to obtain an accounting order, PacifiCorp’s motivation for filing now may be to signal to corporate interests, credit agencies, regulators, and the public at large that PacifiCorp is likely to recover from ratepayers the costs attributable to third-party liability for the Oregon wildfires. Signaling is an insufficient reason for invoking the PSC’s jurisdiction, particularly when the application for deferred accounting is both premature and the signal PacifiCorp seeks to convey is dubious at best.⁴

The PSC should not countenance the filing of pleading for motives ulterior to advancement of the resolution of the regulatory process. Such an approach would be a misuse of regulatory resources and sends a highly questionable messages concerning a matter of significant

⁴ A full analysis of the likelihood that PacifiCorp can recover the costs of the Oregon fires from ratepayers is beyond the scope of this Position Statement. However, the chances that PacifiCorp can recover third-party liability from ratepayers in this situation, viewed in the best light for PacifiCorp, are infinitesimal and, under a more sober view, nonexistent. To recover, PacifiCorp has the burden of proving that its actions regarding the Oregon fires were prudent. However, a jury, under procedure that granted PacifiCorp significantly more due process than available in an administrative forum, found PacifiCorp’s actions to constitute willfulness, recklessness, and gross negligence.

Prudence and negligence are two sides of the same coin, if you have one you don’t have the other. In fact, the legal definitions of the terms reference each other. BLACK’S LAW DICTIONARY 1104 (5TH ed. 1979) (**PRUDENCE**. Carefulness, precaution, attentiveness, and good judgment, . . . as contrasted with negligence); *see also*, *Prudence Defined*, WEX LAW DICTIONARY, <https://www.law.cornell.edu/wex/prudence> (last visited Aug. 4,, 2023) (“The prudent person rule is a hypothetical person used as a legal standard to determine whether someone acted with negligence.”) Thus, the precise issue of prudence has been litigated in the judicial forum and PacifiCorp has been found to act with gross imprudence.

Moreover, the same result can also be reached by applying the doctrine of collateral estoppel, also known as issue preclusion. Collateral estoppel prevents the relitigation of an issue already decided in a prior case and applies when four elements are met. *Buckner v. Kennard*, 2004 UT 78, ¶ 13. One, identity of issues—as noted above negligence and prudence are identical issues. *Id.* Two, the party estopped must have been a party to the prior suit—PacifiCorp is a party in *James v. PacifiCorp*. *Id.* Three, the issue must have been fully and fairly litigated—the issue of negligence/prudence was the central issue of a full jury trial. And four, the issue must be finally resolved on the merits—the issue of negligence/prudence was finally resolved on the merits in a jury trial establishing PacifiCorp’s liability. Accordingly, pursuant to the doctrine of collateral estoppel, PacifiCorp is estopped from arguing in front of the PSC that they acted with prudence in regard to the Oregon wildfires.

public interest. Thus, the present application for deferred accounting should be dismissed without prejudice allowing PacifiCorp to refile when—and if—they can make an adequate showing of the possible entitlement to a deferred accounting order.

CONCLUSION

PacifiCorp’s Application should be dismissed without prejudice for lack of ripeness. The Application itself admits that it is not ripe and PacifiCorp’s motive for filing is suspect. The filing could be meant, not to advance the regulatory process, but to signal that PacifiCorp believes it is likely to recover the costs for third-party liability from ratepayers. Signaling is an insufficient reason to invoke the PSC’s jurisdiction particularly when the application is premature, and the signal PacifiCorp seeks to convey, in all likelihood, is false.

Respectfully submitted, August 11, 2023.

Robert J. Moore
Robert J. Moore
ASSISTANT ATTORNEY GENERAL
Attorney for the Office of Consumer Services

EXHIBIT “A”

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

JEANYNE JAMES, ROBIN COLBERT,
WENDELL CARPENTER, JANE
DREVO, SAM DREVO, BROOKE
EDGE AND BILL EDGE, SR., LORI
FOWLER, IRIS HAMPTON, JAMES
HOLLAND, RACHELLE MCMASTER,
KRISTINA MONTOYA, NORTHWEST
RIVER GUIDES, LLC, JEREMY SIGEL,
SHARIENE STOCKTON AND KEVIN
STOCKTON, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

Case No. 20cv33885
Case Assigned to: Hon. Steffan Alexander

**PLAINTIFFS' MOTION FOR ISSUES
CLASS CERTIFICATION**

ORAL ARGUMENT REQUESTED

Hearing Date: TBD
Time: TBD
Room: TBD

1 This Motion explains why the proposed class meets ORCP 32’s requirements, and how—
2 after certification—notice can be provided to “some or all” class members as that rule requires.

3 III. PROCEDURAL BACKGROUND

4 Plaintiffs filed this case on September 30, 2020 and the operative, Amended Complaint
5 on October 30, 2020. Class Action Compl. (Sept. 30, 2020); Am. Class Action Compl. (Oct. 30,
6 2020). Shortly after that, on November 18, 2020, Presiding Judge Bushong granted the parties’
7 stipulated request to designate this case complex. Order Designating Case Complex (Nov. 18,
8 2020). With this matter assigned to this Court for all purposes, the Court entered the parties’
9 stipulated case schedule and stipulated protective order. Case Mgmt Order (Jan. 20, 2021); Stip.
10 Prot. Order (Apr. 12, 2021).

11 Defendants then moved to dismiss, transfer venue, and strike class allegations, which the
12 Court largely denied. Opinion and Order Den. Mot. to Transfer Venue and Mot. to Strike Class
13 Allegations, and Granting, in Part, Den. in Part, Defs.’ Mot. to Dismiss (May 10, 2021). On July
14 22, 2021, the Court also denied PacifiCorp’s request to certify the Court’s venue and inverse
15 condemnation rulings for appeal under ORS 19.225. Order Den. Defs. Mot. to Amend Order to
16 Certify Questions for Interlocutory Appeal (July 22, 2021). On October 14, 2021 the Oregon
17 Supreme Court denied PacifiCorp’s petition for a writ of mandamus regarding this Court’s venue
18 ruling. Order Den. Petition for Writ of Mandamus, No. S068782 (Or Sup Ct, Oct. 14, 2021).

19 In the meantime, the parties have been actively engaged in discovery, and—most
20 recently—Plaintiffs and counsel for plaintiffs in the related non-class *Allen* and *Salter* matters
21 asked this Court to consolidate the cases and bifurcate them for trial, with phase one being an
22 issues class trial on liability and causation. Pls.’ Mot. to Enter Case Mgmt. Order No. 2 Re:
23 Consolidating Cases and Bifurcating Issues (Oct. 8, 2021). That proposed Case Management
24 Order (“CMO”) No. 2 envisions this issues class certification motion.

25 Finally, Plaintiffs are discussing with Defendants a stipulation for leave to amend their
26 complaint to (1) add two new named plaintiffs who are victims of fires included in the putative

EXHIBIT “B”

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

25 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

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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II. SECOND CLAIM FOR RELIEF: GROSS NEGLIGENCE

QUESTION 4: For each fire that you answered "Yes" in response to Question 1, was the Defendant grossly negligent in one or more of the ways the plaintiffs claim 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

If "yes," for any of the fire areas go to question 5.

If "no" for any of the fire areas your verdict on Claim Two is for defendant for that fire area. Do not answer question 5 for any fire area that you answered "no" for question 4. Do not answer question 6 for any fire area that you answered "no" for question 4.

If you answered "yes" for at least one fire area proceed to question 5. If you answered "no" for all four fire areas proceed to question 7.

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.*

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 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

16
 17
 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

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 20
 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.*
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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	8	11	24	32	37
N	Y	Y	Y	Y	Y
44	48	61	69	83	96
Y	Y	Y	Y	Y	Y

7
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9 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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12 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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15 242 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

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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 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 Y
44 Y	48 Y	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

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 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 Y
44 Y	48 Y	61 Y	69 Y	83 Y	96 Y

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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 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	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

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

QUESTION 17: Was the Defendant's trespass 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 15 must also agree on the answer to question 17 for that particular fire area.

If "no" for any of the fire areas your verdict on Claim Five 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 18, Claim Six, Inverse Condemnation.

VI. SIXTH CLAIM FOR RELIEF: INVERSE CONDEMNATION

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

1 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

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4 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

5

6

7 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

8

9

10 242 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

11

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

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

14 *fire area. Do not answer question 19 for any fire area that you answered "no" for*

15 *question 18. Do not answer question 20 for any fire area that you answered "no" for*

16 *question 18.*

17 *If you answered "yes" for at least one fire area proceed to question 19. If you*

18 *answered "no" for all four fire areas proceed to question 21.*

19

20 **QUESTION 19:** Was the Defendant's inverse condemnation a cause of harm to the

21 Plaintiffs within the boundaries of the fire areas below?

22 Echo Mountain Complex fire YES _____ NO _____

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

25 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

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

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

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> </table>	2N	8Y	11Y	24Y	32Y	37N	
2N	8Y	11Y	24Y	32Y	37N		
<table border="1"> <tr> <td>44Y</td> <td>48Y</td> <td>61Y</td> <td>69Y</td> <td>83Y</td> <td>96Y</td> </tr> </table>	44Y	48Y	61Y	69Y	83Y	96Y	
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> </table>	2N	8Y	11Y	24Y	32Y	37Y	
2N	8Y	11Y	24Y	32Y	37Y		
<table border="1"> <tr> <td>44Y</td> <td>48Y</td> <td>61Y</td> <td>69Y</td> <td>83Y</td> <td>96Y</td> </tr> </table>	44Y	48Y	61Y	69Y	83Y	96Y	
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

EXHIBIT “C”

23-035-30 / PacifiCorp

July 25, 2023

OCS Data Request 1.9

OCS Data Request 1.9

In paragraph 8 of your Application for a Deferral Accounting Order, you stated “If the application is approved the Company will record deferred amounts by debiting Federal Energy Regulatory Commission (“FERC”) Account 182.3-Other Regulatory Assets and crediting FERC Account 925-Injuries and damages.” If your Application is approved, at the occurrence of what event will PacifiCorp begin this accounting treatment, at the conclusion of the appeal, at the actual payment of the judgment, or at some other point? If the accounting treatment starts at some other point, what point?

Response to OCS Data Request 1.9

PacifiCorp periodically evaluates the potential for payment of claims associated with the September 2020 wildfires. If deferred accounting is approved, this evaluation will include the deferral of costs, net of insurance proceeds, associated with these claims. The determination to record the deferral could occur at the conclusion of the appeal, but at the very latest, at the time of payment.

CERTIFICATE OF SERVICE
Docket No. 23-035-30

I CERTIFY that on August 11, 2023, a true and correct copy of the foregoing **Position Statement and Exhibits by the Office of Consumer Services** was served upon the following:

By E-Mail:

datareq@pacificorp.com

utahdockets@pacificorp.com

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Division of Public Utilities

/s/ *Alyson Anderson*

Alyson Anderson, Utility Analyst
Utah Office of Consumer Services