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Will Utah's Rocky Mountain Power customers be on the hook for a costly Oregon wildfire lawsuit?

CEO says no decision has been made, but he doesn't rule out requesting that Utahns share in multi-billion dollar costs.



(Mark Ylen | Albany Democrat-Herald via AP) Chairs stand at the Gates Post office in the aftermath of a fire in Gates, Ore., Sept 9, 2020. The post office was destroyed along with several other buildings in the Santiam Canyon community as a result of the Santiam Fire. In June, a jury found power company PacifiCorp (parent company of Rocky Mountain Power) liable in a class action lawsuit for devastating wildfires in Oregon

in 2020. Rocky Mountain Power CEO says no decision has been made about Utah customers helping to cover the costs of the lawsuit, but he acknowledged it's possible.

By Tim Fitzpatrick | Sep. 9, 2023, 6:00 a.m. | Updated: 12:08 p.m.

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Nine days after a jury found Rocky Mountain Power's parent company liable for potentially billions of dollars in damages in Oregon's 2020 wildfires, Rocky Mountain filed paperwork with the Utah Public Service Commission to account for "liability due to wildfires in Oregon."

On June 12, the jury awarded \$90 million to survivors of the 2020 Santiam Canyon fire. They had accused PacifiCorp of gross negligence and creating a nuisance for failing to shut off power lines during a 2020 Labor Day windstorm. The lawsuit was ruled a class action, meaning that thousands of others can also apply for and receive damages. Estimates say the full settlement [could run as high as \\$11 billion](#).

On June 21, Rocky Mountain filed [a request with the Utah Public Service Commission](#) to create "a deferred accounting order authorizing the company to record a regulatory asset associated with the incremental costs associated with third-party liability due to wildfires in Oregon."

[]

That application was later withdrawn, but Rocky Mountain Power CEO Gary Hoogeveen acknowledged in an interview this week that the company could still be seeking to recover some Oregon costs from Utah ratepayers.

"That's not something we've decided," he said, but the company has opened a dialogue with Utah's legislative leadership and will be meeting with Gov. Spencer Cox.

'Really scary situation'

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Hoogeveen said the growing, unprecedented risks from wildfires across the West have forced utilities to

consider measures they never had before. “It’s a really scary situation. We want to talk more about it,” he said, adding that, “It’s bigger than one company or one state. It’s an issue for the entire West.”

Deferred accounts are the mechanism for allowing utilities to recover costs from unforeseen events. The accounts track expenses that are not included in the utilities’ basic rates but still may be considered a cost that can be passed on to ratepayers.

If the \$11 billion estimate is realized, it will rival [the \\$13.5 billion settlement Pacific Gas and Electric agreed to in 2019](#) after it was held liable for four major fires in California between 2015 and 2018.

More than three-quarters of Utah’s population is served by PacifiCorp through Rocky Mountain, and Utah has 44% of Pacificorp’s customer base, the largest of any state. If those Utahns are expected to absorb that percentage of an \$11 billion loss, it would be nearly \$5 billion. By comparison, PacifiCorp’s [total annual revenue in 2022](#) was \$5.7 billion.

Hoogeveen called the \$11 billion figure “wild speculation. I don’t think it’s appropriate.”



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PacifiCorp is appealing both the jury verdict and the class-action status. “We like our chance on appeals, to be honest,” Hoogeveen said.

“PacifiCorp will vigorously pursue appeals and are confident that we will prevail,” the company says on [its web page about the litigation](#).

‘Bigger than Berkshire’

Pacificorp is an investor-owned utility, and it’s not clear how much ratepayers — meaning customers in Utah and other states — would be responsible for paying toward a settlement, or whether the shareholders — most of them stockholders in Warren Buffett’s [Berkshire Hathaway](#) — would absorb the loss.

Hoogeveen re-emphasized that no decision has been made about applying to have Utah ratepayers to help cover Oregon costs, but he also said future potential liabilities could be larger than any one company can handle. “This is bigger than Berkshire,” he said in reference to western wildfires. PG&E had to file for Chapter 11 bankruptcy protection because of its fire claims.

Hoogeveen also noted that Utahns for years have gained advantages from being part of a six-state system with diverse energy sources. That includes clean Oregon hydropower powering Utah at times. “Our six

states have benefited from the diversity of the system. Our costs are lower. There is strength of diversity of load.”



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The Utah Public Service Commission sets rates for public utilities in the state, and the commission decides what costs investor-owned utilities can pass along to Utah customers. That is because the utilities are private companies that are granted monopolies to operate. Similar regulatory agencies operate in the six states PacifiCorp serves. Hoogeveen said the company made similar requests for deferred accounts in the other states.

After Rocky Mountain filed its June request for a wildfire deferred account, three entities challenged it as premature since the full extent of wildfire costs are still unknown. Those entities are the state Division of Public Utilities, which oversees utility regulation in Utah, the Office of Consumer Services, a state agency that represents consumers in rate cases, and the Utah Association of Energy Users, an organization of large industrial electricity customers.

After those challenges were filed, Rocky Mountain on August 21 withdrew the request, but it can refile when the costs are better known.

\$115-million jump in insurance rates

But the next day (August 22), Rocky Mountain filed a [separate request to create a deferred account for costs from increased insurance premiums](#). “Wildfire liability risk is impacting the commercial insurance markets with an increase in the premiums for available insurance coverage,” the company said in its application.

“PacifiCorp estimates that the commercial insurance costs are approximately \$125 million (total company) for the policy period beginning August 15, 2023 or later. Current rates reflect approximately \$10 million (total company) in insurance costs, which would result in a deferral for Utah’s allocated share of approximately \$115 million (total company) for the difference between the new costs and the amount in rates.”



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Hoogeveen acknowledged that the new rate was set after the June verdict. He also said the company’s

total coverage has decreased by 60 percent, a decision made by insurers who were no longer willing to offer as much coverage as they used to. The Utah entities that challenged the wildfire account have not yet responded to the application about insurance costs.

Hoogeveen said at this point the company is not seeking any direct funding from Utah or any other government. “We believe there is a regulatory solution.”

The Utah code that regulates utilities only mentions deferred accounts without detailing when they can be used, but there is case law. Specifically, the [1986 case](#) Utah Department of Business Regulation vs. Public Service Commission of Utah established that deferred accounts can be used for an unforeseeable event that “results in an extraordinary increase or decrease in expenses or revenue.”

Were the Oregon fire damages unforeseeable if the company was found to be negligent? That could be debated and perhaps litigated.

Correction: The Oregon jury awarded the 17 survivors \$90 million. An earlier version gave an incorrect total for the June verdict.



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— **Mojo DmnZ** 1 month ago

I don't recall receiving any shareholder benefits. So let me get this straight, shareholders can receive the benefits but they don't share in the risk? This is one to watch!

 Respect  Reply  Share  Report

— **Ken Hunt** 1 month ago

As they say in Utah, "You bet"

 Respect 1  Reply  Share  Report

— **William Sherratt** 1 month ago

After you issue shares to ratepayers equal to what you charge them, then you can ask them to help. NOT BEFORE!

Respect 3 Reply Share Report

— **Yorgus** 1 month ago

Shareholders should be paying first. **NO** dividends to shareholders—they should be first to shoulder the cost. *Then and only then* should costs be passed to ratepayers.

Between 1985 and 1995, all or nearly all savings and loan (S&L) financial institutions in this county failed. Most depositors lost nothing, only those with deposits exceeding the amount insured by the SLDIC were lost. Shareholders lost everything.

My late step-father-in-law, his father, and his siblings formed the largest S&L in Arizona in 1929. By the time my mother-in-law married him, he was worth millions, but nearly all of his wealth was in S&L stock. In the aftermath, not only did he lose all of his investment built over 60 years, he was also the target of shareholder lawsuits, although he had retired from the company nearly 15 years earlier.

This is as it should be. Shareholders should not be reaping huge profits while ratepayers bear the cost of negligence. If you own stock in RMP, you are an **investor**. Investments can make money, break even or lose money.

If Berkshire-Hathaway stockholders are left with a capital loss, it will cost pension funds and 401k owners around the country. It would likely impact me personally. That's how it is supposed to work. Expecting the ratepayers to cover the entire loss is just wrong. (And, FWIW, I pay a small, monthly charge to RMP for my late Dad's shop in Cache Valley, but I am not otherwise a RMP ratepayer.)

Respect 7 Reply Share Report

— **E101XOR** 1 month ago

In reply to Yorgus

There is a potential political problem. Some utilities are being forced to spend money on renewable energy but aren't able to recover the additional costs because public service commissions won't approve the necessary rate increases. So, they cut costs in maintenance which may include removing trees along or about power lines. If that's the case, then it is the Oregon ratepayers who should pay under the concept of the failure of the rating

commissions to understand the law of unintended consequences.

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