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March 18th, 2025
Re: HB 3666 (-1)

Chair Kropf, Vice Chairs Chotzen and Wallen, and Members of the House Judiciary Committee,

Thank you for the opportunity to testify today on behalf of the Oregon Trial Lawyers Association. My name is Jonathan Manton.

I want to begin by acknowledging the shared values and aims of everyone that has participated in the process leading to HB 3666. Whether we represent individuals who suffered great loss, utilities, agencies, businesses like timber companies, other stakeholders, or constituents as elected representatives, each of us are Oregonians who want to never again endure the tragic outcomes resulting from catastrophic wildfires. We also want to thank Rep. Owens for joining these discussions and note the wildfire safety records of both the rural electric cooperatives and timber industry.

While we cannot speak for all the attorneys who've been involved in litigation against the utilities, with -1 amendment OTLA would move to a position of neutrality on this bill.

I'd like to explain why we oppose HB 3666 as drafted without the amendment. I first want to incorporate the testimony from two members of OTLA from the informational hearing on HB 3666 that took place on March 3rd before this committee. Specifically, I ask for all the verbal testimony from Cody Berne and John Devlin to be included in the record. I also want to incorporate two minutes of comments from Michael Ware, Director of the Stanford Woods Institute for the Environment, from the 1:17-1:19 mark. A link to those proceedings is here.

<https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2025031091>

OTLA cannot get to a position of support for HB 3666 even with the -1.

After participating in the informal work group discussions that led to this bill, it became clear to us that the role of the Public Utility Commission ("PUC") in regulating the Investor Owned Utilities ("IOUs") is vital. We ask that the PUC strengthen its capabilities as a regulatory body for Oregonians as compared to overly acting as that of a partner with them. While we are neutral on HB 3666 as amended with the -1, we do not support this bill in part because it falls short of accomplishing what is needed from the PUC to regulate IOUs for safety.

We speak for the more than 1500 victims of IOU negligence, gross negligence, and recklessness that caused the 2020 Labor Day fires. (I am attaching an explanation of negligence and gross negligence that we hope will be helpful to this Committee). These are victims whose lives were



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lost. These are victims whose entire communities were destroyed. These are victims who have experienced extreme trauma. And for the vast majority of these victims, the civil justice system has not yet provided them with compensation for their damages. One IOU responsible for causing these damages from the 2020 Labor Day fires continues to draw out the pace of accessing justice through the civil justice system.

The PUC doesn't have the resources nor staff to meaningfully audit and ensure power companies comply with fire safety rules. The PUC inspects only a small percentage of power lines each year because the PUC has only a few inspectors.

Too often, the PUC allows power companies to get away with recurring safety violations. The PUC warned an IOU over and over prior to 2020 Labor Day about 'disturbing' problems with the IOU's tree pruning (vegetation management) but the PUC didn't do anything about the 'disturbing' misconduct.

There are no new, material changes in wildfire safety requirements in HB 3666. Should HB 3666 not pass into law, the following current statutes and administrative rules, if enforced would require power companies to operate safely.

--ORS 757.020. "REQUIREMENTS OF UTILITIES TO FURNISH ADEQUATE AND SAFE SERVICE AT REASONABLE RATES," The statute includes,, "Every public utility is required to furnish adequate and safe service, equipment and facilities, ..."

--ORS 757.960. "WILDFIRE PROTECTION AND MITIGATION WORKSHOP," The statute already requires the PUC to hold workshops to help power companies develop and share information about wildfire best practices, risk based wildfire mitigation protection and risk based wildfire mitigation procedures and standards.

--ORS 757.963. "PUBLIC UTILITY RISK-BASED WILDFIRE PROTECTION PLAN; REQUIREMENTS; EVALUATION AND APPROVAL BY COMMISSION...", The statute already requires IOU's to have and comply with a wildfire protection plan that is filed with the PUC and evaluated by the PUC. The plan requires the power companies, among other things, to identify areas subject to heightened risk, identify ways to mitigate risk, identify preventative actions and describe vegetation management.

Section 5 states that "Not more than 180 days after receiving a wildfire protection



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plan or plan update from a public utility, the commission shall approve or approve with conditions the plan or update if the commission finds that the plan or update is based on reasonable and prudent practices identified through workshops pursuant to ORS 757.960 and designed to meet all applicable rules and standards adopted by the commission.”

Regarding Section 3 Sub (B) Sub (C) and Sub (D) of the current version of HB 3666:

Performing an internal wildfire safety culture assessment and adopting a process to implement the findings of the assessment should already be included in the ORS 757.020 “Requirement to provide safe electricity”. See also ORS 757.963

The same is true for providing wildfire safety to employees.

The same is true for conducting annual safety performance reviews establishing processes to facility reporting risks and management accountability.

The same is true for implementing other wildfire mitigation measures.

Relevant existing Oregon Administrative Rules include:

OAR 860-024-0010, “CONSTRUCTION, OPERATION, AND MAINTENANCE OF ELECTRICAL SUPPLY AND COMMUNICATION LINES,” which already requires power companies to “construct, operate, and maintain” their equipment in compliance with NESC (National Electrical Safety Code) standards.

OAR 860-024-011, “INSPECTIONS OF ELECTRIC SUPPLY AND COMMUNICATION FACILITIES,” already requires a power company to maintain its equipment in compliance with PUC safety rules and inspect its power lines.

OAR 860-024-0016, “MINIMUM VEGETATION CLEARANCE REQUIREMENTS,” already sets the minimum distance trees and branches can be from power lines. And subpart (7) says, “(7) Each Operator of communications



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facilities must ensure vegetation around communications lines do not pose a foreseeable danger to the pole or electric supply Operator's facilities.”

***OAR 860-024-0017, “VEGETATION PRUNING STANDARDS,”* requires power companies to prune trees in compliance with American National Standard for Tree Care Operation.**

***OAR 860-024-0018, “HIGH FIRE RISK ZONE SAFETY STANDARDS,”* already creates safety and inspection rules. It requires safety patrols. (5) explains that any violation that is an imminent danger must be fixed, disconnected, or isolated.**

***OAR 860-024-0050, “INCIDENT REPORTS,”* requires power companies to report fires they start to the PUC. However, the OAR prevents the reports from being used in court. (5) “(5) An incident report filed by a public or telecommunications utility in accordance with ORS 654.715 cannot be used as evidence in any action for damages in any suit or action arising out of any matter mentioned in the report.”**

Our civil justice system exists to protect victims of negligence and to hold entities responsible when their negligence causes damage to others. It also exists to protect from liability everyone who has acted reasonably under the circumstances they are in.

Questions of fact as to what constitutes unreasonable actions, whether those actions or failures to act, actually caused the damage, and the amount of damages that should be awarded if so, are each decided by a jury of one’s peers in a court of law. In a court there are rules of evidence, expert testimony from all sides, and cross examination of all witnesses. The proceedings are thorough and designed to be fair for all parties. These questions of fact and applied legal standards are appropriately decided by a jury and a judge.

I want to close by thanking the members of this committee and the stakeholders in this process. We all must do what we can to minimize the chances of these horrible events ever happening again. At the end of the day, this body must prioritize the victims at the center of this discussion which includes those that could exist from future events. Whether it is homeowners, timber companies, small businesses or mobile home park owners, we must make sure any legislation dealing with wildfires protects our fellow Oregonians.

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Negligence vs Gross Negligence vs Inherent Risk Explained

➤ **Negligence:**

- Refers to the failure to exercise reasonable care, resulting in harm to another person. It is when someone isn't careful enough and causes harm, but didn't mean to.
- It involves actions (or inactions) that a reasonably prudent person would not have taken in the same situation.
- Example: A driver runs a red light but didn't mean to and causes an accident.

➤ **Gross Negligence:**

- A more severe form of negligence that shows a reckless disregard for the safety or rights of others. It means someone was extremely careless or reckless.
- It implies a willful or extreme lack of care that goes beyond ordinary negligence.
- Example: A surgeon performing an operation while intoxicated.

Examples:

Negligence is giving the wrong dose of medicine.

Gross negligence is a surgeon cutting off the wrong limb.

Negligence is a rear end collision.

Gross negligence is driving 100mph the wrong way on an interstate.