

From: Sam Drevo, Fire Survivor, Gates, Oregon
Re: Testimony on HB 3917 - Protection for Investor Owned Utilities at the Expense of Oregon Fire Victims.

Date: April 2, 2025

+++++

Chair Kropf, Vice-Chairs Chotzen and Wallan, Members of the Judiciary Committee,

I write today in strong opposition to HB 3666 and HB 3917. I have read the proposed amendments to HB 3666 and they do not address my concerns. I have sent you emails, and testified on HB 3666. I have also sent you an email on HB 3917. Below is my testimony on HB3917, an open letter reaction from Santiam fire survivors to the newly released ODF report (Exhibit A), and our council's response to the lacking ODF report released 54 weeks post fire (Exhibit B).

I am a survivor of a utility-caused fire, and I have had to fight for recovery and deal with PacifiCorp's trial tactics over the last four plus years. In that trial, I learned to what lengths PacifiCorp would go to avoid liability. I lost my home, my business and a rental property as a result of the recklessness of PacifiCorp.

I care deeply about Oregon and its future. I want to decrease the likelihood that future Oregonians will have to go through what my mom and I went through.

Oregon is at a crossroads. Do we stand with Oregonians or do we bow to the demands of investor owned utilities who claim they need protections from having to pay for fires they cause.

The Oregon Dept of Forestry took over 54 months to issue a "report" on the fires, and I put that in quotes because the "report" is tainted by its self-interest in securing cost recovery. Most upsetting is that the "report" ignored all the information brought to light in the trial, and reached its "conclusions" even while admitting that PacifiCorp had destroyed evidence.

Did people in the Santiam Canyon lose their firefighters that night? Yes, dozens of them had to flee from Gates School and Fisherman's Bend. Were there many ignitions that the investigators missed or did not address? Yes. Did PacifiCorp report all of the ignitions it caused? No. Did PacifiCorp destroy evidence of its ignitions? Yes.

I have attached a detailed accounting from the survivors of PacifiCorp's negligence and reckless disregard.

I know there is a lot of pressure from investor owned utilities to limit their liability. They are claiming they need this to avoid bankruptcy, but there is no way for you to judge the veracity of these claims. The parent company has hundreds of billions in free cash, and the consequences

of their subsidiary declaring bankruptcy (a debt call) is far greater than the cost of taking care of 2020 fire victims.

I know that this kind of legislation has passed in Wyoming, and that makes sense because Wyoming is a coal state. Warren Buffet's Berkshire Hathaway mines and sells coal from one of its subsidiaries to another of its subsidiaries to burn and make electric power. This is going to lead to bad outcomes for fire survivors who get burned up in the future, and probably will be reflected in insurance premiums that all people will pay. I also know that Utah has also passed this kind of legislation, and then the elected officials there faced massive backlash when Berkshire's subsidiary there promptly turned around and raised rates by nearly 30%.

Idaho rejected liability limits as patently unfair. New Mexico has done the same. California, which has the most experience with utility-caused fires, has attempted to set up a fair system, but its experiment is facing possible collapse because of the Eaton fire. More on that in a minute.

I have struggled to understand how some Democrats in this state are backing a bailout for a billionaire corporation at the expense of Oregonians, while survivors of fires from 2020 still have not been able to rebuild their lives. It has been even harder to fathom, given that Representative Marsh has been an advocate for fire recovery since her community burned in 2020 as well.

Now, to HB 3917. There is a lot I could say, but I will limit my remarks to a few key points.

Timing of Investigations. The bill requires that investigations be completed within 30 days. Given how long ODF took to complete its "report" (over 54 months) in what universe is this timeline even possible? Given that the utilities are not required to report their ignitions in less than 24 hours, but instead within a month, how does the legislature expect the Office of State Fire Marshall to get the job in this timeframe. The reason California is able to do the investigations it does in the timeframes it does them in is because it has the manpower and the laws and regulations in place to make them happen.

Reckless, Fire Starting Utilities Can Qualify for the Fund. PacifiCorp was found grossly negligent and reckless in Oregon, and it was provided they destroyed evidence. And then, at trial, its former employee Heide Caswell who now works for the PUC said that PacifiCorp need do nothing different in the future. Hearing that from her at the trial was infuriating, and I do not think a company making these statements should be able to qualify for any liability protections or access the fund until it has established at least 5 years of good

conduct (i.e. no fires). Allowing them to qualify for it is like allowing a driver with three DUI convictions to offer up a plan promising to “be sober” and get their license back!

California’s Experiment. I think it is worth learning what we can from California’s utility fire legislation. While I am troubled by many of the remarks PUC Commissioner Tawney made at the last hearing, and in other proceedings, and generally do not have a favorable opinion of the PUC’s ability to look out for Oregonians — she did say that she was committed to learn from California’s approach on these issues. I urge you to compare HB 3917 to AB 1054, and read up on how AB 1054 is being viewed now 6 years after its passage. A recent LA Times article laid bare how this experiment is going so far, and it is not a favorable assessment.¹ And I further note that AB 1054 is far less favorable to utilities than HB 3917 is to utilities. Let me quote from the article:

“In California Gavin Newsom passed AB 1054 within a matter of weeks in 2019. This bill slashed utilities’ liability for fires caused by their equipment. It changed the law so that such companies are now automatically deemed to have acted “prudently” as long as they’ve obtained an annual safety certification from state regulators prior to any fire.”

“Edison (the S Cali Utility) has credited AB 1054 with significantly limiting the company’s liability for wildfires that its equipment ignites. In a securities filing last year, Edison said that because of AB 1054, any uninsured costs from wildfires after the law’s adoption in July 2019 “are probable of recovery through electric rates” — rates that are paid by its customers.”

“One question facing Edison now is potential liability from the Eaton fire. It has told its investors that AB 1054 and the safety certificate granted to it by California regulators in October will ease the possible financial hit. Damage from the Eaton and Palisades fires in January combined has been estimated at more than \$250 billion.”

“The company said in a presentation to Wall Street analysts Feb. 27 that if its equipment is found to have started the Eaton fire, it wouldn’t have to reimburse the state wildfire fund for claims paid to victims unless outside parties could raise “serious doubt” that it had acted prudently. Even if that happened, the company said, the law would cap its liability to \$3.9 billion.”

“Regulators from the state Office of Energy Infrastructure Safety granted Edison a safety certificate Oct. 31 — despite myriad problems they found in its fire prevention work.”

¹ *Edison customers are paying more for fire prevention. So why are there more fires?*
<https://www.latimes.com/environment/story/2025-03-30/edisons-wires-spark-scores-of-fires-each-year-despite-billions-charged-to-customers-to-prevent-them>

That is not very encouraging, to say the least. Edison had dozens of open work orders for clearing vegetation and other crucial work on three of the transmission lines near the ignition sites of the Eaton Fire. California is literally spending \$10s of billions of dollars and its residents are not safe from utility caused fires. In fact, Edison started 178 fires in 2024, which is up from 107 fires in 2015.

Ratepayers Foot the Bill. In California, utilities hold a \$1B insurance policy as a starting point. Edison spent an estimated \$1.9 Billion on wildfire prevention in 2024 (or 15% of rates) up from 9% the year before costing the average rate payer an extra \$300/year in cost to support utility caused wildfire prevention. Edison has successfully passed costs onto their rate payers, just like PacifiCorp & PGE have done to Oregonians in the past 4 years.

Standards Relaxed, Costs Passed to Consumers, Less Safe. And this appears to have created a roll back of scrutiny at the same time. State officials responsible for overseeing fire prevention efforts have relaxed their standards. And by allowing utilities to shift the cost of damages from wildfires to customers, even when the blazes were caused by company mistakes, the utilities have less of an incentive to mitigate wildfire risks.

The Bottom Line. In PacifiCorp's Wildfire Mitigation Plan in 2020, it had 2 weather stations amidst their 28,000 miles of power lines. PacifiCorp didn't know where the winds were, or, to a large extent, when or how their equipment caused fires. They destroyed evidence of potential equipment failures, and internal messages about it. PacifiCorp was called by 911 dispatch to turn off the power numerous times, and PacifiCorp didn't respond quickly, and when PacifiCorp did respond it was to turn the power back on which caused more fires.

Oregon has the opportunity to demand that utilities reduce the number of fires caused by their equipment, require reporting when they do start fires, and require investigating the cause and working to reduce fire starts. We can work on creating public acceptance for inevitable wildfires, public safety power shutoffs and reducing the duration of those power shutoffs. We can invest in preparing Oregonians for wildfire from all causes. We can invest in distributed power facilities and back-up power to reduce the pain and disruption caused by power shut offs. These are the things that we need to focus on. Not on providing protections and bailouts for trillionaire corporations, and their Wall Street backers.

Thank you for your kind attention to my concerns.

Regards,
Sam Drevo

Exhibit A:
Open Letter to ODF from
Santiam Fire Residents

James v. PacifiCorp Santiam Canyon Residents' Response to ODF Report

Dear Oregon Department of Forestry,

We are residents of the Santiam Canyon. We lived through the events of September 7, 2020, and have since sought accountability for the destruction PacifiCorp's fires caused to our community. When you wrote in your report that "over 1,500 structures were damaged or destroyed, and 4 lives were lost" because of the fires that ravaged our community, you were talking about our homes, businesses, schools, and neighbors.

For over four years, we have patiently waited for you—our government—to fulfill your duty to investigate and determine the origin, cause, and responsible party of the fires that burned in our community. While we understand that power companies like PacifiCorp have power, deep pockets, and plenty of influence in Salem, we expected that you would undertake your investigation without any fear, bias, or favor and consider *all* the evidence, whether favorable or unfavorable to the powerful company.

But you did not live up to our expectations and your obligations to us. Our class counsel has described very serious flaws evident in your investigation. We briefly summarize them here:

- 1. You failed to address evidence proving that PacifiCorp's fires spread and caused destruction in the Santiam Canyon. Your investigation completely missed several significant, key fires that were clearly linked to PacifiCorp's powerlines and destroyed our community. Your report did not even mention them.***
- 2. For the few fires your report did identify, your investigation either missed, ignored, or suppressed overwhelming evidence about PacifiCorp's involvement—all of which a jury heard and found PacifiCorp responsible. In fact, your investigation completely failed to consider the months and volumes of evidence from the James trial.¹***
- 3. Your investigation gives PacifiCorp a free pass for intentionally destroying nearly all the evidence in the Santiam Canyon.***
- 4. Your investigation ignores that PacifiCorp's fires at the Gates School and Fishermen's Bend forced hundreds of professional wildland firefighters to evacuate the Santiam Canyon on the night of Labor Day 2020, leaving our community defenseless.***

¹ "What Caused the 2020 Santiam Wildfires? Investigation Sheds Light on Deadly Fires," *Statesman Journal*, March 19, 2025 ("ODF said it didn't use any information from the two-month James trial that included eyewitnesses and experts testimony.").

These egregious omissions—along with the concerning circumstances surrounding the release of your report²—call into question your credibility and independence. We believe that you must act quickly and transparently to restore public faith in your ability to investigate power-line fires.

We therefore ask that you acknowledge your report’s flaws, retract it, and revise it to the reflect the truth. We ask that you at least review and consider the full evidence—not just the evidence arguably favorable to PacifiCorp—before reaching any conclusions about what happened in our community. We also ask that you immediately make public *any and all* drafts of the report and communications you had with PacifiCorp before and after releasing the report, including any meetings, emails, phone calls or any other form of communication.

While we are troubled by your choice to bailout PacifiCorp, we consider ourselves lucky to live in a country where the courts, the law, the rules of evidence, and ultimately the juries have the final say. The justice system cannot be lobbied. And we are proud that after hearing all the evidence, the *James* jury rightfully found that PacifiCorp was negligent, reckless, and played a substantial role in destroying our community.

Sincerely,

Santiam Canyon Residents

/s/ Bruce Bailey

/s/ Jeanyne James

/s/ Kathleen Becherer

/s/ David Giller

/s/ Christian Bigness

/s/ Chris Grom

/s/ Jane Drevo

/s/ Richard Jensen

/s/ Sam Drevo

/s/ Josephine Jensen

/s/ Debbie Fawcett

/s/ Stephen Nielsen

/s/ James Fawcett

/s/ Diane Turnbull

² “Oregon State Forester Cal Mukumoto resigns amid department controversy: What we know,” *Statesman Journal*, January 9, 2025.

Exhibit B:
James Council Response to ODF
Report about Santiam Fires

James v. PacifiCorp Class Counsel Response to ODF Report

Oregon Revised Statute (ORS) chapter 477 requires the Oregon Department of Forestry (“ODF”) to investigate *all* wildfires that occur on or threaten ODF protected lands and to conduct unbiased fact finding to determine the origin, cause, and the responsible party. On March 19, 2025, ODF issued a brief and seriously flawed report (“ODF Report”) concluding that seven fires caused by powerlines did not contribute to the spread of large fires in the Santiam Canyon on Labor Day 2020.

The ODF Report is a violation of ODF’s statutory duties to Oregonians and the residents of the Santiam Canyon. ODF either missed, ignored, or suppressed overwhelming evidence that PacifiCorp caused fires that spread and caused widespread destruction in the Santiam Canyon. The *James* jury heard this evidence for nearly two months and rightfully concluded that PacifiCorp’s negligence and recklessness played a substantial role in burning down the Santiam Canyon. ODF, on the other hand, did not even consider the evidence adduced at the *James* trial.¹

We describe below serious flaws evident in ODF’s investigation.

1. ***ODF failed to address evidence proving that PacifiCorp’s fires spread and caused destruction in the Santiam Canyon.*** While the U.S. Forest Service found that “at least 13 new fires were started between Detroit and Mehama from downed powerlines,” ODF’s Report only references seven and does not mention the fire at Fishermen’s Bend, which was one of the largest and most destructive that burned through the Santiam Canyon. We do not understand why ODF failed to identify—let alone properly investigate—these fires started by PacifiCorp. The ODF Report also either missed, ignored, or suppressed evidence proving that PacifiCorp caused the fires on Potato Hill, at Gates School, and by Kelly Lumber, which all spread through the Santiam Canyon. The evidence at trial proved that these fires were key factors in the chaos PacifiCorp caused and overall destruction of the Santiam Canyon.

2. ***ODF gives PacifiCorp a free pass for intentionally destroying nearly all the evidence in the Santiam Canyon.*** ODF admits that PacifiCorp prevented its investigators from analyzing *any* “electrical equipment and powerline hardware in the Gates/Mill City area” because PacifiCorp immediately destroyed and failed to preserve evidence of its power equipment at key ignition sites. But then ODF gives PacifiCorp a free pass and claims that PacifiCorp did not cause several fires in the exact places where PacifiCorp destroyed all evidence. This does not make sense. As the judge and jury presiding over PacifiCorp’s trial recognized, PacifiCorp cannot be allowed to benefit from its own destruction of evidence.

¹ “What Caused the 2020 Santiam Wildfires? Investigation Sheds Light on Deadly Fires,” *Statesman Journal*, March 19, 2025 (“ODF said it didn’t use any information from the two-month *James* trial that included eyewitnesses and experts testimony.”).

3. ODF investigation ignores that PacifiCorp’s fires at the Gates School and Fishermen’s Bend forced hundreds of professional wildland firefighters to evacuate the Santiam Canyon, leaving the community defenseless. The *James* jury found PacifiCorp responsible for the destruction in the Santiam Canyon in part because PacifiCorp caused devastating fires at the exact locations where hundreds of professional and volunteer firefighters had gathered to fight the Beachie Creek Fire. In other words, even setting aside the destruction PacifiCorp’s own fires caused, the jury considered that people in the Santiam Canyon unnecessarily lost their homes and businesses *from the Beachie Creek Fire* because of PacifiCorp’s gross negligence that night. The ODF Report does not acknowledge any of this.

I. ODF Failed to Address Evidence Proving that PacifiCorp’s Fires Spread and Caused Destruction in the Santiam Canyon.

As we explain below, the ODF Report does not address several fires that are clearly linked to PacifiCorp’s power lines—including the fire at Fishermen’s Bend, which was massive and a major part of the Santiam Canyon burning. The ODF Report also does not mention clear photographic evidence proving that PacifiCorp’s fire at the Gates School was never contained, never extinguished, and continued to spread outside of the Gates School into the Santiam Canyon. The Report also failed to address evidence that shows that PacifiCorp caused the fires on Potato Hill and at Kelly Lumber, which both spread and burned throughout the Canyon.

And ODF missed other fires. For reference, the U.S. Forest Service found that “at least 13 new fires were started between Detroit and Mehama from downed powerlines,” while ODF’s Report only references seven.

Our point is straightforward: ODF cannot claim that there is no evidence that powerline ignitions “significantly contributed to the spread of the fire in the Santiam Canyon” when its investigation failed to identify many of the powerline ignitions in the Santiam Canyon. And the pattern is clear. ODF uncritically adopted the same arguments PacifiCorp tried and failed to sell the jury while missing, ignoring, or suppressing clear and overwhelming evidence proving PacifiCorp’s liability to the residents of the Santiam Canyon.

A. Fishermen’s Bend

ODF failed to identify and investigate the fire that erupted at Fishermen’s Bend Recreation Area. Fishermen’s Bend is right off Highway 22—ODF could not have missed a more obvious ignition. It was undisputed at trial that the Fishermen’s Bend Fire grew quickly, nearly killed hundreds of campers, and could have trapped thousands of people evacuating on Highway 22. It was never contained, and it indisputably contributed to the overall spread of fire in the Santiam Canyon.

There is substantial evidence that PacifiCorp caused the fire at Fishermen’s Bend. A firefighter at Fishermen’s Bend personally watched a limb fall on a powerline and ignite a fire.² And a longtime campground host testified under oath that he saw a big orange glow erupt from the precise area where PacifiCorp’s powerlines ran through Fishermen’s Bend.³ Another host testified about frantically evacuating hundreds of sleeping campers as the fire erupted.

The jury saw the Fishermen’s Bend Fire raging in a video recorded by an eyewitness, which shows the park completely engulfed in flames.⁴ We encourage ODF investigators to watch the video. Our clients lived through the Santiam Canyon Fires. They were among the many who fled for their lives westward on Highway 22. We are confident that no one who took that journey that night could possibly have missed the fire at Fisherman’s Bend.⁵

But ODF’s investigation missed this fire. The ODF Report’s investigation narrative makes clear that ODF did not identify—let alone investigate—the fire at Fishermen’s Bend. The investigation narrative does not mention the fire at all.

B. Gates School

ODF’s analysis of the Gates School Fire suffers from similar flaws. The ODF Report concludes that the Gates School Fire—which PacifiCorp admitted to starting—“did not contribute to the fire that burned through the Santiam Canyon” based largely on its interview of two witnesses, who both claimed the fire was “under control” when they saw it. *See* ODF Report at A8.

But ODF’s investigation either missed, ignored, or suppressed overwhelming evidence that contradicted PacifiCorp’s litigation position. For example, the U.S. Forest Service’s lead fire behavior analyst for the Beachie Creek Fire—again, the person ultimately responsible for tracking the progression of the Beachie Creek Fire—testified under oath that PacifiCorp’s fire at the Gates School was not contained and continued to spread south outside of the Gates School into the Santiam Canyon. He testified as follows:

“And then I stepped out to the back of the school and then I saw that there was fire on the back of the school. And that the fire -- basically, at that time, the team had given up, fire was basically headed south from the school. Not a lot we could do at that point.

² *See James* Trial Transcript at 2855-56.

³ *See James* Trial Transcript at 2864.

⁴ *See James* Trial Transcript at 4355-56; *James* Plaintiffs’ Exhibit 2342.

⁵ To take just a few examples, one longtime Santiam Canyon resident testified that the fire at Fishermen’s Bend was “about 30 acres” by the time he saw it. *See James* Trial Transcript at 2721. Another eyewitness testified that he saw the entire campground “engulfed in fire.” *See id.* at 2824. A third eyewitness, a longtime campground host, barely escaped Fishermen’s Bend with his life after fleeing from “flames that appeared to be about 20 feet tall” moving “very, very fast” with the wind. *See id.* at 2865.

Shortly thereafter, then, the incident commander gave the order, we're evacuating, we're leaving now.”⁶

The ODF Report did not account for any of this evidence. ODF’s failure to interview the fire behavior analyst—or simply read his sworn, uncontroverted testimony—is inexcusable.

There is more. A lieutenant at the Gates Fire Department similarly testified under oath that by the time he arrived at the Gates School, he saw a “large commercial building, fully involved with flames 50 feet in the air.”⁷ He explained that the Gates Fire Department, along with the wildland fighting team, “were not equipped to fight” the “major fire” at the Gates School.⁸ A third eyewitness testified that the Gates School Fire was never contained, and he showed the jury several pictures he took that prove the fire was never contained, never extinguished, and continued to spread outside of the Gates School into the Santiam Canyon throughout the evening.⁹ He was clear about this:

“Q. At any time did you see the fire at the Gates School extinguished?

A. No.

Q. Did you see the fire at the Gates School spreading?

A. Yes.”¹⁰

None of this evidence is referenced in the ODF Report’s investigation narrative. Like PacifiCorp’s fire at Fishermen’s Bend, PacifiCorp’s fire at the Gates School was never contained, and it indisputably contributed to the overall spread of fire in the Santiam Canyon.

C. Potato Hill

Consider ODF’s analysis of the fire at Potato Hill. ODF’s investigation adopts PacifiCorp’s argument that this fire was “started by fire brands” from the Beachie Creek Fire. *See* ODF Report at A8. ODF reached this conclusion based primarily on its assessment that “there are no power lines within the timber sale unit,” as well as an interview of one witness who apparently saw “embers falling out of the air” *after* the fire on Potato Hill ignited. *See id.*

But ODF’s investigation failed to address evidence that shows that PacifiCorp caused the fire on Potato Hill. *First*, no fewer than *eight* eyewitnesses confirmed under oath that they did *not* see a single ember or firebrand in the sky before Potato Hill erupted in flames; they each

⁶ *See James* Trial Transcript at 3018.

⁷ *See James* Trial Transcript at 2659 (“Q. What did you see when you arrived? A. A large commercial building, fully involved with flames 50 feet in the air. And at that point in time, we were the one engine there on scene. We were not equipped to fight that fire Q. Now, when you say a fully-involved fire, what do you mean? What is that? A. ‘Fully-involved’ means the flames were coming out through all the windows. They’re coming -- the roof is breached. You have flames coming through the roof, and it is a major fire.”).

⁸ *See James* Trial Transcript at 2659.

⁹ *See James* Trial Transcript at 2780-81 (“Q. Now, did the fire continue to grow throughout that evening? A. Yes.”).

¹⁰ *See James* Trial Transcript at 2784-85.

claimed they saw embers and firebrands *only after* that point, emanating from the fire on Potato Hill itself.¹¹

One of those eyewitnesses was the U.S. Forest Service’s lead fire behavior analyst for the Beachie Creek Fire. He was the man responsible for tracking the progression of the Beachie Creek Fire, and he testified under oath that embers from the Beachie Creek Fire did *not* cause the fire on Potato Hill. He made this clear:

“QUESTION: Okay. And so the fire on Potato Hill and the other fires that you saw, not caused by Beachie Creek?

ANSWER: In -- I don't believe so.”¹²

The ODF Report did not acknowledge any of this evidence.

Second, the ODF Report wrongly assumes that PacifiCorp could not have caused the fire on Potato Hill because PacifiCorp did not have power equipment in the area where the fire began. That is not true. The jury heard and saw undisputed evidence that PacifiCorp had a power pole and transformer at the base of Potato Hill.¹³

And the jury heard clear evidence of significant electrical activity at the base of Potato Hill *right before* the fire on Potato Hill erupted. An eyewitness with a clear line of sight to Potato Hill reported a “flash from the direction of the base of Potato Hill” and a “very, very large bang” sound right before he saw fire erupt on the hill.¹⁴ He testified under oath that he was “100 percent” certain of what he saw.¹⁵ Another eyewitness also testified under oath that he saw a flash from the base of Potato Hill right before he saw a glow and then fire moving upslope on Potato Hill.¹⁶ The ODF Report did not acknowledge any of this evidence that PacifiCorp caused the fire on Potato Hill.

D. Kelly Lumber

ODF’s investigation also either missed, ignored, or suppressed evidence of PacifiCorp’s involvement in the fire at Kelly Lumber. Kelly Lumber abuts Highway 22. This became another large, uncontained, and destructive fire that contributed to the overall destruction of the Santiam Canyon. ODF’s investigation concluded that the fire at Kelly Lumber was “probably caused by fire brands” from the Beachie Creek Fire based primarily on its assessment that PacifiCorp had “no powerlines” on the north side of the highway where one eyewitness saw fire. *See* ODF Report at A9.

Again, ODF’s investigation either missed, ignored, or suppressed evidence. Two eyewitnesses who saw the fire at Kelly Lumber confirmed that “there were no embers in the air

¹¹ *See James Trial Transcript* at 4302-05.

¹² *See James Trial Transcript* at 3022.

¹³ *See James Trial Transcript* at 4306; *James Plaintiff’s Exhibit* 3064.

¹⁴ *See James Trial Transcript* at 2803.

¹⁵ *See James Trial Transcript* at 2803.

¹⁶ *See James Trial Transcript* at 4314.

that would have been coming from Beachie Creek at the time.”¹⁷ ODF’s investigation also ignored the fact that (1) a separate eyewitness saw fire underneath PacifiCorp’s powerlines on the *south* side of the highway and (2) our investigation identified and showed the jury physical evidence of downed powerlines found on the north side of the highway with clear evidence of arcing.¹⁸

ODF’s claim that there were no power lines on the north side of the highway makes no sense. There were many business—like Kelly Lumber—and other buildings there on the north side of the highway. These businesses had electricity supplied by PacifiCorp.

E. Other “Missed” Fires

ODF’s investigation also failed to identify and investigate several of PacifiCorp’s other fires in the Santiam Canyon. For example, the *James* trial record contains multiple references to a fire at 28340 N. Santiam Hwy, which the Stayton and Aumsville fire departments both reported and responded to, and which grew to “at least a couple acres” and was never contained.¹⁹ An eyewitness who lived directly across from this fire reported that “she saw a bright flash” and heard a loud explosion from PacifiCorp’s power equipment right where this fire occurred.²⁰ The ODF Report’s investigation narrative does not mention this fire.²¹

PacifiCorp caused another fire at 832 N. Santiam Highway, where an eyewitness reported on a 911 call: “A transformer just blew and caught on fire across from my house.”²² Our investigation found physical evidence of PacifiCorp’s power lines showing clear evidence of arcing.²³ The ODF Report’s investigation narrative does not mention this fire.²⁴ It also does not mention the fire near Minten Lane even though the Stayton Fire District reported that it was “dispatched to report of fire from down power lines,” “arrived to find ¼ acre burning along the river bank in brush and grass,” and that “downed power lines kept [them] from mopping up” the fire.²⁵

We could go on. The ODF Report refers to a U.S. Forest Service press release on September 10, 2020, which found 13 powerline fires. The U.S. Forest Service said:

¹⁷ See *James* Trial Transcript at 4331.

¹⁸ See *James* Trial Transcript at 4334.

¹⁹ See *James* Plaintiffs’ Exhibits 1087, 2836; *James* Trial Transcript at 2818 (“Q. Okay. How big was the fire that you saw at the Anderson property at that time? A. At least a couple acres.”).

²⁰ See *James* Trial Transcript at 4387-88.

²¹ The ODF Report’s investigation narrative references a different but nearby fire at 1090 SW Alder St. but cites a single eyewitness for the erroneous proposition that there are no “no power lines in the vicinity” of that area. See ODF Report at A9.

²² See *James* Trial Transcript at 4363.

²³ See *James* Trial Transcript at 4366.

²⁴ The ODF Report’s investigation narrative references a different incident at 814 N. Santiam Hwy that apparently did not result in fire. See ODF Report at A9-A10.

²⁵ See *James* Plaintiffs’ Exhibit 2834.

“Fire managers have now determined that at least 13 new fires were started between Detroit and Mehama from downed powerlines during the peak of Monday’s wind event and then on Tuesday a large front of wind-driven fire ran through the city of Detroit from the east.”²⁶

This contemporaneous federal report directly contradicts ODF’s findings, which only was able to identify seven such powerline fires.

II. ODF’s Investigation Failed to Account for PacifiCorp’s Destruction of Evidence.

We are confused by the ODF Report’s refusal to address the impact of PacifiCorp’s rampant destruction of evidence. Thorough analysis of physical evidence like power lines and power equipment is one of the most important aspects of any investigation into the cause and origin of these fires. But here, fire investigators—including ODF’s own investigators—could not analyze much of the physical evidence because PacifiCorp immediately destroyed and failed to preserve evidence of its power equipment in key ignition sites like Fishermen’s Bend, Potato Hill, and Kelly Lumber.

PacifiCorp’s destruction of evidence was a major issue at the *James* trial. On September 8, 2020—the very next day after PacifiCorp started scores of fires in the Santiam Canyon—PacifiCorp’s Chief Legal Officer announced a confidential “investigation” about the company’s role in the fires.²⁷ The PacifiCorp employee in charge of the investigation admitted at trial that PacifiCorp then went into the Canyon, quickly replaced all its powerlines and power equipment, and took this evidence to the “dump.”²⁸ PacifiCorp knew that it was required to preserve the evidence, presumably as part of its “investigation.” But hardly any physical evidence was preserved. A seasoned fire investigator testified that he had never seen such rampant destruction of evidence.²⁹

It is common sense that a corporation cannot benefit from its own destruction of evidence. A corporation cannot claim it is investigating, destroy almost all the evidence of its liability, and then stand up and tell the community there is no evidence of its liability. That does not make sense. And that is not how the law works. So at the *James* trial, the judge instructed the jury that it could reasonably infer that the evidence PacifiCorp willfully and intentionally destroyed would have been adverse to it.³⁰ The law does not reward people who destroy

²⁶ See ODF Report at A7 (citing USFS Executive Summary).

²⁷ See *James* Trial Transcript at 1047; *James* Plaintiffs’ Exhibit 2765.

²⁸ See *James* Trial Transcript at 8238 (“The corporation’s position is, I believe there were two sites that there were locations where equipment was taken after it was removed from being in service. So whatever equipment was destroyed by the fire, I believe was taken to one or two spots and then probably taken to a dump.”), 1055-56.

²⁹ See *James* Trial Transcript at 4265.

³⁰ See *James* Trial Transcript at 8323-24.

evidence. We bring this up to say that no fair adjudication of PacifiCorp's role in causing the fires can fail to account for PacifiCorp's intentional destruction of evidence.

But ODF's investigation does exactly that. The ODF Report acknowledges PacifiCorp's rampant destruction of evidence and admits that its investigators were prevented from analyzing *any* "electrical equipment and powerline hardware in the Gates/Mill City area" because PacifiCorp destroyed all this evidence. Specifically, ODF wrote:

"ODF was unable to analyze electrical equipment and powerline hardware in the Gates/Mill City area. This was due to PacifiCorp and their contract crews work of repairing and restoring power, including the removal of damaged electrical equipment. The specific items and quantity of hardware removed is unknown; the potential evidentiary value of this equipment is unknown as well."

ODF Report at A2.

Despite acknowledging that ODF does not and cannot know the quantity and evidentiary value of the evidence that PacifiCorp destroyed, ODF nevertheless concludes that "[n]o evidence was found that these powerline ignitions significantly contributed to the spread of the fire in the Santiam Canyon." Yet again, this does not make sense.

III. ODF's Investigation Failed to Account for PacifiCorp's Impact on Fire Suppression.

Finally, we note that ODF's investigation ignores that PacifiCorp caused fires that forced hundreds of professional wildland firefighters to evacuate the Santiam Canyon, leaving the community defenseless. The *James* jury considered that PacifiCorp could be held responsible for the destruction in the Santiam Canyon in part because it caused fires at the Gates School and Fishermen's Bend, which were the exact locations where hundreds of professional and volunteer firefighters had gathered to fight the Beachie Creek Fire.³¹

The firefighters that PacifiCorp drove out of the Canyon would have made a difference. There were limited but successful fire suppression and structure protection efforts that night, as the Mill City Fire Chief explained to the jury at trial.³² In other words, even setting aside the destruction PacifiCorp's own fires caused, people in the Santiam Canyon unnecessarily lost their homes and businesses from the Beachie Creek Fire because of PacifiCorp's gross negligence that night. The ODF Report does not acknowledge any of this.

³¹ See James Trial Transcript at 2864 ("Q. What were those firefighters in the park originally for? What were they there to do? A. They were there to fight the Beachie Creek Fire. Q. But now they're evacuating? A. They're evacuating.").

³² See James Trial Transcript at 5133.

CONCLUSION

We are unable to reconcile ODF's choice to ignore voluminous evidence of PacifiCorp's fault. Is ODF intimidated by PacifiCorp's power and influence? Is ODF seeking support from PacifiCorp to help with ODF's mismanagement and funding crises? Whatever ODF's motives, its choice to shirk its statutory duty is unacceptable to the thousands who suffered and continue to suffer because of PacifiCorp's grossly negligent, willful, and reckless behavior. The people of the Santiam Canyon—and all Oregonians—expect and deserve that ODF will do its job. The evidence presented in court under penalty of perjury has been available to ODF for nearly two years. We invite ODF to do its job and investigate.