

May 21, 2025

The Honorable Jason Kropf, Chair  
Oregon House Judiciary Committee  
Oregon State Capitol  
900 Court Street, NE  
Salem, OR 97301

Senate Bill 926-A5 – Opposition

Chair Kropf and Members of the Committee:

PacifiCorp has received the SB 926-A5 amendments dated May 20, 2025. PacifiCorp continues to oppose this bill for the reasons stated in its testimony dated May 13, 2025, and adopts and incorporates that testimony. To the extent the -5 amendments are further considered by the Committee, however, PacifiCorp offers the attached redline and the following additional comments for your consideration.

## **Section 2**

By imposing restrictions on an electric company's ability to recover costs based on a court or jury finding, but before a final judgment is entered, Section 2 disincentivizes electric companies to reach settlements or otherwise resolve cases at earlier stages of litigation. PacifiCorp believes that, if Section 2 is to be considered, its restrictions should be triggered upon entry of a final judgment.

In addition, prohibiting an electric company from recovering costs related to damaged equipment is also problematic. Repair and replacement after an event provides electric companies with opportunities to make needed upgrades and improvements. Reducing an electric company's incentive to make those upgrades may reduce overall system resiliency. In addition, as Legislative Counsel noted, restrictions on recoverable costs—particularly capital costs—may raise constitutional concerns.

Finally, the Public Utility Commission has broad existing authority to review electric companies' rates. The commission has expertise in this area, and that process has adequately balanced the interests of utility and consumers in the past. Section 2 should contain a provision defaulting to the commission's existing authority in this area.

### **Section 3**

Similar to Section 2, Section 3 should be triggered only after entry of a final judgment. PacifiCorp has also proposed clarifying that the electric company's proposed payment is being evaluated, and the payees include its affiliates and subsidiaries.

PacifiCorp believes that, if Section 3 is adopted, an appropriate deadline should be placed on the commission's review and proposes ninety (90) days.

### **Section 4**

PacifiCorp proposes striking Section 4 for several reasons. First, the concerns about an electric company's ability to pay is adequately addressed in Section 3. Allowing the commission to review any payment or distribution ensures that an electric company will not be able to divert existing assets to the extent a liability judgment is entered. Second, Section 4 would upend existing law governing bonds on appeal and interfere with the ongoing wildfire litigation. The standards and requirements for bonds are well-settled and adequately addressed in current statutes. Third, it would have unintended consequences. As written, Section 4 would permit *any* plaintiff to require PacifiCorp to bond any future judgment, even judgments to which that plaintiff is not a party. In doing so, a single plaintiff would be able to make decisions for other plaintiffs and would expose those plaintiffs to potential costs of the bond if the judgment is reversed. PacifiCorp is not aware of another area of law where a similar circumstance is permitted. Fourth, the language gives the court no guidance or standard by which to estimate whether, and how much, any future judgment will be entered. The plaintiffs in existing wildfire cases have highly individualized damages ranging from less than \$150,000 to over \$11 million. There is no feasible means by which a court could (or should) impose a bond requirement for an unknown number of plaintiffs with an unknown amount of damages.

### **Section 5**

PacifiCorp proposes striking Section 5 for similar reasons. First, it would interfere with existing court decisions that have already adjudicated these issues using well-settled standards governing prejudgment interest. Those issues are on appeal and should be heard and determined by the appellate court. Second, prejudgment interest standards have been in place for decades and have worked well, balancing the needs of fairness and certainty, and not standing in the way of parties' ability to resolve cases. Third, establishing a rebuttable presumption of the date of loss based on allegations alone is a radical departure from existing civil law and the operation of the burden of proof.

Pacific Power appreciates the opportunity to provide comments on Senate Bill 926-A5 and remains committed to a constructive policy to address catastrophic wildfires. We look forward to participating in conversations on how to do just that.

Please contact Annette Price at 971-284-6996, Elizabeth Howe at 503-910-3270 or Shawn Miller at 503-551-7738 if you have questions.

SB 926-A5  
(LC 1362)  
5/20/25 (CPA/ps)

Requested by Representative KROPF

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 926**

1 On page 1 of the printed A-engrossed bill, line 2, after “company” insert  
2 “; and declaring an emergency”.

3 Delete lines 4 through 19 and delete page 2 and insert:

4

5

**“WILDFIRE LITIGATION**

6

7 **“SECTION 1. Sections 2 and 3 of this 2025 Act are added to and**  
8 **made a part of ORS chapter 757.**

9 **“SECTION 2. (1) As used in this section:**

10 **“(a) ‘Electric company’ means an electric company, as defined in**  
11 **ORS 757.600, that services electricity to more than 25,000 retail elec-**  
12 **tricity consumers located in this state.**

13 **“(b) ‘Retail electricity consumer’ has the meaning given that term**  
14 **in ORS 757.600.**

**“(c) ‘Final judgment’ means a general judgment that is not subject  
to further appeal or review or for which the time to file an appeal has  
expired without a party filing an appeal.**

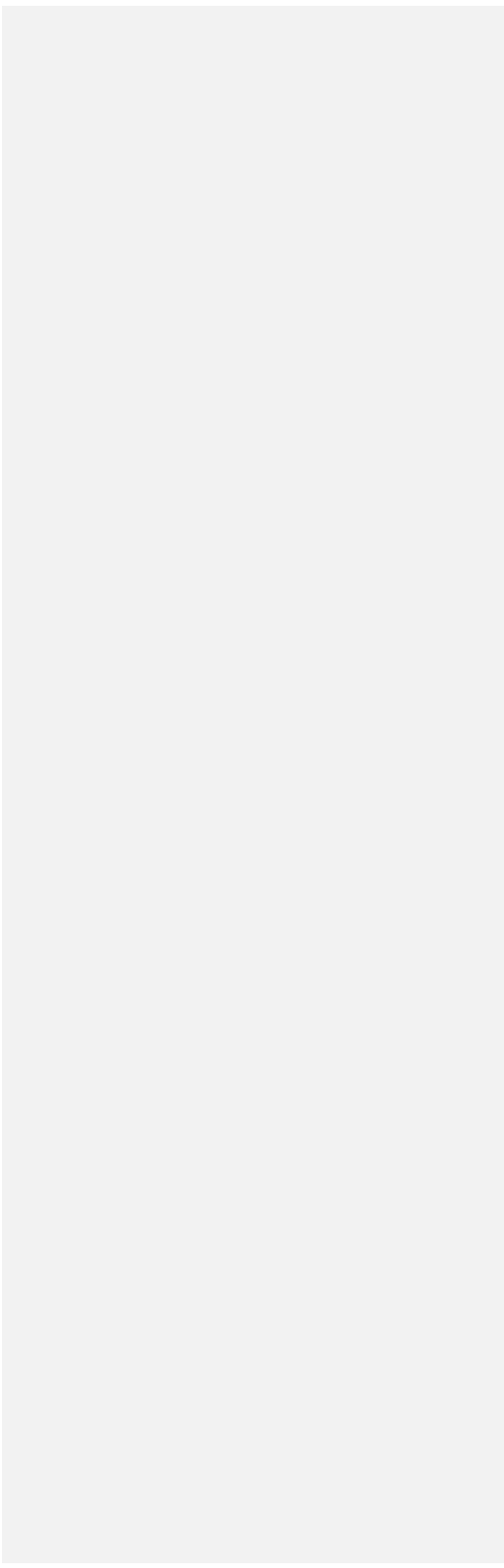
15 **“(2) If a final judgment is entered in a criminal or civil action**  
**arising out of a wildfire that resulted from the**

16 **negligence or a higher degree of fault on the part of an electric com-**  
17 **pany, the electric company may not recover from retail electricity**  
18 **consumers the following costs and expenses:**

Deleted: a court or jury finds that a

Deleted:

19       “(a) Costs and expenses that are, or are associated with, a civil  
20 judgment, civil fine or penalty or criminal fine or penalty that results  
21 from or is based on the finding that the wildfire resulted from the



1 negligence or a higher degree of fault on the part of the electric  
2 company.

3 “(b) Costs and expenses that are, or are associated with, a settle-  
4 ment ~~of a criminal or civil action in which a final judgment is entered,~~

5 ~~“(c) Litigation costs and expenses of, or associated with, a final  
judgment in a civil~~

6 or criminal action in which the court or jury finds that the wildfire  
7 resulted from the negligence or a higher degree of fault on the part  
8 of the electric company.

9 ~~“SECTION 3. (1) As used in this section, ‘electric company’ means~~  
10 an electric company, as defined in ORS 757.600, that services electricity  
11 to more than 25,000 retail electricity consumers, as defined in ORS  
12 757.600, located in this state.

13 “(2) If an electric company owes any debt on an outstanding final  
general judg-

14 ment that is based on a finding by a court or jury that a wildfire re-  
15 sulted from the negligence or a higher degree of fault on the part of  
16 the electric company, the electric company shall provide notice to the  
17 Public Utility Commission 30 days prior to the date the electric com-  
18 pany:

19 “(a) Pays or distributes dividends, income, interest or profits of the  
20 electric company or its affiliate or subsidiary to any person or indi-

Deleted: that is based on:

Deleted: <#>“(A) The underlying allegations that there are losses, expenses or¶ damages caused by the wildfire that resulted from the negligence or¶ a higher degree of fault on the part of the electric company; or¶ “(B) The finding that the wildfire resulted from the negligence or¶ a higher degree of fault on the part of the electric company.¶

Deleted: <#>the

Deleted: <#>“(d) Costs and expenses of, or associated with, repairing or replac-¶ ing the electric company’s real or personal property that was damaged¶ or destroyed in the wildfire that the court or jury finds resulted from¶ the negligence or a higher degree of fault on the part of the electric¶ company.¶

1   vidual with an ownership or beneficial interest in the electric com-  
2   pany.

3       “(b) Pays or distributes stock or other ownership interest in the  
4   electric company or its affiliate or subsidiary to any person or indi-  
5   vidual with an ownership or beneficial interest in the electric com-  
6   pany.

7       “(c) Repurchases stock or other ownership interest in the electric  
8   company or its affiliate or subsidiary from any person or individual  
9   with an ownership or beneficial interest in the electric company.

10      “(3) Upon receiving a notice from an electric company, the com-  
11   mission may:

12      “(a) Order the electric company to suspend the payment, distrib-  
13   ution or repurchase identified in the notice for a period of time to al-  
14   low the commission to investigate the impact of the payment,  
15   distribution or repurchase;

16      “(b) Impose restrictions on the payment, distribution or repurchase  
17   identified in the notice;

18      “(c) Establish a minimum common equity percentage of the electric  
19   company’s total capital and require the electric company to maintain  
20   at least the minimum common equity percentage; and

21      “(d) If the electric company’s common equity percentage is below  
22   the minimum common equity percentage established by the commis-  
23   sion:

24      “(A) Prohibit the electric company from carrying out the payment,  
25   distribution or repurchase identified in the notice; and

26      “(B) Require the electric company to submit a plan within 60 days  
27   to the commission detailing how the electric company plans to meet  
28   the minimum common equity percentage established by the commis-  
29   sion.

30      “(4) When evaluating an electric company’s proposed payment,

1 distribution or repurchase identified in a notice, the commission shall  
2 consider the electric company's obligation to provide adequate service  
3 to its customers and its ability to pay the debts owed on the out-  
4 standing judgment or judgments.

5 "(5) The commission shall complete its review of any noticed  
transaction under this section within ninety (90) days.

6 "

7

**Deleted:** SECTION 4. (1) In a civil action arising out of allegations that the conduct of an electric company, as defined in section 3 of this 2025 Act, caused or substantially contributed to a wildfire, a plaintiff may file a motion to require the electric company to file a security or bond.  
"(2) The court shall grant a motion filed under this section and order the electric company to file a security or bond if:  
"(a) The civil action is proceeding in two stages such that liability and damages are determined at different stages;  
"(b) At the liability stage, the plaintiff establishes that the wildfire resulted from the negligence or a higher degree of fault on the part of the electric company; and  
"(c) The electric company has been found by a court or jury to be liable to other plaintiffs or in other civil actions for damages, losses or other harms resulting from the same wildfire.  
"(3) The court shall establish the amount of a security or bond or dered under this section in an amount that is sufficient to demonstrate the ability of the electric company to pay a money award in the civil action. The court shall establish the amount in consideration of other money award judgments that may be awarded against the electric company for damages, losses or other harms resulting from the same wildfire.

**Deleted:** <#>"SECTION 5. In a civil action arising out of allegations that the conduct of an electric company, as defined in section 3 of this 2025 Act, caused or substantially contributed to a wildfire:  
"(1) A plaintiff may file a motion at any time to have prejudgment interest accrue:



1 **“SECTION 6.** (1) As used in this section, ‘final judgment’ means a  
2 **general** judgment that is not subject to further appeal or review or  
3 for which

4 the time to file an appeal has expired without a party filing an appeal.

5 “(2) In a civil action arising out of allegations that the conduct of  
6 an electric company, as defined in section 3 of this 2025 Act, caused  
7 or substantially contributed to a wildfire, a plaintiff may file a motion  
8 for entry of a supplemental judgment against the electric company for  
9 any additional tax liabilities that the plaintiff may owe on the under-  
10 lying final judgment if the tax liabilities on the final judgment are  
11 greater than the tax liabilities that a plaintiff would have owed on the  
12 final judgment if the final judgment was entered and satisfied on the  
13 date the electric company was found to be liable.

14 **“SECTION 7.** Sections 2 to 6 of this 2025 Act apply to wildfires that  
15 are ignited on or after January 1, 2020.

25

26 **“WILDFIRE SAFETY CERTIFICATION**

27

28 **“SECTION 8.** Sections 9 to 11 of this 2025 Act are added to and made  
29 a part of ORS chapter 757.

30 **“SECTION 9.** (1) The Legislative Assembly finds that:

**Deleted:** <#>“(a) From the date the wildfire caused the claimed damages, losses¶ or other harm if the amount of the damages, losses or other harm is¶ ascertainable from the date the wildfire caused the claimed damages,¶ losses or other harm.¶  
“(b) From the date liability in the civil action is established if the¶ amount of the damages, losses or other harm is ascertainable from the¶ date liability in the civil action is established.¶  
“(2) For purposes of a motion filed under this section, there is a¶ rebuttable presumption that damages, losses or other harm to real¶ property occurred from the date the wildfire ignited the real property.¶

1       “(a) Human-caused wildfires are a risk to people, property and the  
2 natural environment in Oregon;

3       “(b) Electric utilities play an important role in reducing and miti-  
4 gating the risks of human-caused wildfires;

5       “(c) Electric utilities are required to have and operate in compli-  
6 ance with a risk-based wildfire protection plan under ORS 757.963 or  
7 risk-based wildfire mitigation plan under ORS 757.966;

8       “(d) Consistent with ORS 756.040, the Public Utility Commission has  
9 the jurisdiction and powers to supervise and regulate public utilities  
10 with regard to wildfire safety; and

11       “(e) State agencies, through regulations and orders, are allowed to  
12 establish standards of care that apply to entities that the state agen-  
13 cies regulate.

14       “(2) It is the intent of the Legislative Assembly:

15       “(a) To establish wildfire safety standards that apply to public util-  
16 ities; and

17       “(b) To vest the Public Utility Commission with the authority to  
18 implement and enforce the wildfire safety standards in a manner that  
19 is consistent with state law.

20       “SECTION 10. (1) A public utility that provides electricity shall file  
21 annually an application with the Public Utility Commission for a  
22 wildfire safety certification.

23       “(2) The commission shall issue a wildfire safety certification to an  
24 applicant if the applicant:

25       “(a) Has a wildfire protection plan approved under ORS 757.963.

26       “(b) Establishes that the applicant is implementing and taking  
27 actions identified in the wildfire protection plan. The application must  
28 describe and verify the development and adoption of the wildfire pro-  
29 tection plan’s components and measures by documenting, for the prior  
30 12-month period, the applicant’s wildfire mitigation expenditures and

1 physical evidence of the work taken in the development and adoption  
2 of the wildfire protection plan's components and measures.

3 “(c) Identifies any actions identified in the wildfire protection plan  
4 that have not been implemented, provides adequate justification for  
5 not taking such actions and establishes dates by which such actions  
6 will be taken.

7 “(d) Demonstrates a commitment to wildfire safety. An applicant  
8 may demonstrate a commitment to wildfire safety through various  
9 means, such as:

10 “(A) Participating in workshops convened by the commission under  
11 ORS 757.960.

12 “(B) Performing an internal wildfire safety culture assessment and  
13 adopting a process to implement the findings of the assessment.

14 “(C) Providing wildfire safety training to employees.

15 “(D) Conducting annual safety performance reviews establishing  
16 processes to facilitate the reporting of risks and management ac-  
17 countability.

18 “(E) Implementing other wildfire mitigation measures.

19 “(e) Has taken timely and reasonable actions on matters within the  
20 applicant's control, that are consistent with safety rules adopted by  
21 the commission under ORS 757.035, to address any outstanding defi-  
22 ciencies reported by the commission during the commission's most  
23 recent audit and safety inspection of the applicant's infrastructure.

24 “(f) Meets any other requirements adopted by the commission.

25 “(3) The commission may adopt requirements under subsection  
26 (2)(f) of this section that help verify that an applicant is applying  
27 risk-based wildfire mitigation standards and procedures to protect the  
28 public safety, reduce risks to utility customers and promote electric  
29 system resilience to wildfire damage. To verify that the applicant  
30 meets requirements adopted under subsection (2)(f) of this section, an

1 applicant may provide reviews, assessments or evaluations conducted  
2 by third parties that demonstrate the applicant's efforts regarding risk  
3 reduction and development of a resilient electric system.

4 “(4) The commission shall approve or deny an application for a  
5 wildfire safety certification within 90 days after receipt of the appli-  
6 cation. If the commission finds that an application does not include  
7 documentation sufficient to approve the application, the commission  
8 may allow the applicant to provide additional documentation or re-  
9 quire the applicant to refile.

10 “(5) The issuance of a wildfire safety certification:

11 “(a) Establishes that a public utility has established and imple-  
12 mented wildfire policies and practices consistent with the  
13 commission's wildfire safety standards for public utilities on the date  
14 the certification is issued.

15 “(b) Does not relieve a public utility from its obligation to take  
16 reasonable care to proactively prevent wildfires and mitigate wildfire  
17 risk.

18 “(c) Does not establish immunity against claims for damages re-  
19 sulting from a wildfire.

20 “(6) The denial of an application for a wildfire safety certification  
21 does not establish liability for claims for damages resulting from a  
22 wildfire.

23 “(7) Failure of the commission to act in a timely manner on an  
24 application for a wildfire safety certification is not admissible evidence  
25 in a civil proceeding relating to allegations that a utility that provides  
26 electricity caused or contributed to a wildfire.

27 “(8) The commission, in consultation with the State Forestry De-  
28 partment, the Department of the State Fire Marshal and academic  
29 institutions with expertise in evidence-based wildfire mitigation strat-  
30 egies, shall adopt rules for the implementation of this section. The

1 rules must include:

2 “(a) Reporting and auditing requirements for determining an  
3 applicant’s implementation of the applicant’s wildfire protection plan  
4 approved under ORS 757.963.

5 “(b) The timing, procedures, reporting requirements and standards  
6 for the review of an application for a wildfire safety certification.

7 “SECTION 11. A public utility that provides electricity shall file the  
8 public utility’s first application under section 10 of this 2025 Act no  
9 later than December 31, 2027.

10

11 “STUDY ON CATASTROPHIC WILDFIRE  
12 RISK AND RECOVERY

13

14 “SECTION 12. (1) The Public Utility Commission shall commission  
15 a third-party expert to conduct a study and examine issues related to  
16 catastrophic wildfire risk and recovery and develop a range of scenar-  
17 ios for a balanced solution.

18 “(2) The study must:

19 “(a) Articulate and examine the negative consequences of cat-  
20 astrophic wildfires, including:

21 “(A) The risks and impacts of electricity service disruption to  
22 communities located in areas with high risk of wildfires, including  
23 electricity service disruption resulting from wildfire mitigation prac-  
24 tices;

25 “(B) The liability risks from wildfires for a public utility and the  
26 effects of those risks on a public utility’s ability to access capital or  
27 insurance, and the secondary effects on customers, the state’s eco-  
28 nomic growth, electricity reliability, electricity generated from zero-  
29 emissions or renewable resources and the ability of the state to  
30 achieve the clean energy targets set forth in ORS 469A.410 and other

1 state policy goals; and

2 “(C) The pace of wildfire recovery funding;

3 “(b) Outline a range of policy options, including their essential ele-  
4 ments, that balance the needs of communities impacted by a wildfire  
5 and utility customers. The range of policy options must address:

6 “(A) A process by which communities and individuals who are im-  
7 pacted by a wildfire may receive fair and expedient economic com-  
8 pensation for damages caused by the wildfire;

9 “(B) An overall approach that supports stable access to low-cost  
10 capital in order to advance the state’s economic growth, electricity  
11 reliability, electricity generated from zero-emissions or renewable re-  
12 sources and the ability of the state to achieve the clean energy targets  
13 set forth in ORS 469A.410 and other state policy goals; and

14 “(C) The process and timing by which the causes of a wildfire are  
15 determined; and

16 “(c) Enumerate the steps required to implement the proposed policy  
17 option solutions and provide a general cost estimate for carrying out  
18 the administrative implementation steps with enough sufficiency to  
19 support a fiscal impact analysis.

20 “(3) During the 2026 regular session of the Eighty-third Legislative  
21 Assembly, the commission shall provide an interim report, in the  
22 manner provided in ORS 192.245, to the committees of the Legislative  
23 Assembly related to energy and environment on the study’s findings  
24 and recommendations. The commission shall provide recommen-  
25 dations for a stakeholder process to follow the final study report with  
26 the goal of the stakeholder process being to develop recommendations  
27 for legislation for the 2027 regular session of the Eighty-fourth Legis-  
28 lative Assembly.

29 “(4) The commission shall assess a fee against the public utilities  
30 that provide electricity services to defray the costs of carrying out the

1 provisions of this section.

2 **“SECTION 13.** Section 12 of this 2025 Act is repealed on January 2,  
3 **2028.**

4

5 **“CAPTIONS**

6

7 **“SECTION 14.** The unit captions used in this 2025 Act are provided  
8 **only for the convenience of the reader and do not become part of the**  
9 **statutory law of this state or express any legislative intent in the**  
10 **enactment of this 2025 Act.**

11

12 **“EFFECTIVE DATE**

13

14 **“SECTION 15.** This 2025 Act being necessary for the immediate  
15 **preservation of the public peace, health and safety, an emergency is**  
16 **declared to exist, and this 2025 Act takes effect on its passage.”.**

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