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Wildfires bankrupted California’s largest utility. What will happen to Oregon’s PacifiCorp?

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A swingset and the remains of burned homes and a vehicle in Gates, Oregon on Sept. 13, 2020. The town of Gates, along the Santiam River, was ravaged by wildfire that fire victims say was caused by PacifiCorp power lines. Brooke Herbert / Staff Brooke Herbert/The Oregonian/OregonLive Brooke Herbert/The Oregonian/OregonLive

By Ted Sickinger| The Oregonian/OregonLive

Despite losing a costly wildfire lawsuit last week and staring down another perilous trial in November, Oregon's second-largest utility appears positioned for now to weather the storm without the type of financial meltdown even its own lawyers warned could be on the horizon. But PacifiCorp is beginning to feel some pain.

The company's decision to bring the class action lawsuit to trial instead of settling with victims was an unusual financial gamble. PacifiCorp now faces an unprecedented bill in Oregon that could conceivably reach billions of dollars. A Multnomah County jury awarded $90 million in damages to a subset of just 17 victims of four fires from Labor Day 2020, with potentially thousands of other victims in the class to be compensated in future court proceedings.

PacifiCorp appears to have several financial options beyond the prospect of bankruptcy. Not the least is its plan to fight the verdict, with company officials expressing confidence they'll win an appeal, or a longshot attempt to pass lawsuit costs on to ratepayers.

Wildfires now stand as perhaps the biggest financial risk facing utilities on the West Coast. California's largest utility, Pacific Gas & Electric, filed for bankruptcy following the 2018 Camp fire that virtually razed the town of Paradise, destroying 18,000 structures and killing 85 people. A $13.5 billion settlement left a victims' trust owning a significant share of its stock to fund damages claims.

PacifiCorp is a subsidiary of billionaire Warren Buffett's mammoth conglomerate, Berkshire Hathaway. As a standalone entity, PacifiCorp doesn't have the immediate wherewithal to write a massive check. And that could leave the company's deep-pocketed parent company, Berkshire Hathaway Energy, with a choice between pitching in to cover costs or the undesirable option of exposing the crown jewel of its utility portfolio to a bankruptcy proceeding and the risk of losing equity in the company, not to mention the reputational damage.

Already, S&P Global Ratings downgraded PacifiCorp's credit rating this week and changed its outlook for Berkshire Hathaway Energy and its other utility subsidiaries from stable to negative**.** That shift could ultimately hit ratepayers' wallets by increasing the company's cost of borrowing money for big projects.

Analysts at S&P cited the class action verdict and the potential for major awards going forward. The ratings agency said that while it expected PacifiCorp to receive "extraordinary support" from its parent company in most circumstances, "we no longer believe BHE would support PacifiCorp under all foreseeable circumstances."

Even so, Robert McCullough, a Portland energy consultant, said he expects PacifiCorp and Berkshire Hathaway will maintain control of the company and continue providing electricity to some 600,000 Oregonians.

"It's going to be very unlikely we'll see a fiscal disaster here for Warren Buffett," he said. "They'll use up some of its current value, but it will remain an operating utility. … These are very smart people. The thought of them stumbling into a bankruptcy is inconceivable."

McCullough said Berkshire Hathaway has taken a curiously aggressive stance with PacifiCorp, maximizing cash flows and taking big dividends from its subsidiary while delaying infrastructure improvements to better address wildfire risks. Now it's doing the same with litigation.

"Their behavior is puzzling. They only had to look south to see what could happen," he said of PG&E, later adding, "I would have settled out of court."

Jurors found the company responsible for causing the Santiam fires east of Salem, the Echo Mountain complex near Lincoln City, the South Obenchain fire northeast of Medford, and the Two Four Two near the upper Klamath town of Chiloquin.

It was PacifiCorp's lawyers who first raised the specter of bankruptcy at trial.

They told jurors that if the owners of 2,500 properties damaged in the four fires all were awarded the same damages as the 17 named plaintiffs in the case, it would exceed the $10.7 billion net worth of the company.

That may have been lawyerly scare tactics to reduce the punitive damages that jurors ultimately awarded to victims. The 2,500 properties in question experienced some level of burning in the fires, but many were unoccupied and had no home or other improvements on them.

Still, even an average award of $400,000 to those owners would get PacifiCorp to $1 billion in damages. Meanwhile, it faces litigation in three more fires its equipment allegedly caused in 2020 and 2022, and the verdict in Multnomah County may have just made those claims more valuable. The company could also face other litigation from federal, state and local authorities looking to recover losses and firefighting costs.

The utility had accrued estimated wildfire losses on its balance sheet of $824 million by the end of March. But as Ryan Weems, a senior company accountant, told jurors during the trial, that's an accounting reserve and the money isn't lying around in a bank account. In fact, the company reported just $19 million in cash and equivalents at the end of March – after paying its parent company a $300 million dividend. The company has made $550 million in such payments since the fires, and $1.8 billion since 2017.

PacifiCorp on Friday acknowledged the downgrade in its credit rating but didn't comment about its financial capacity to pay damages to wildfire victims.

"The recent verdict is only one step in a long process for PacifiCorp to pursue other measures of relief, such as appeals," Simon Gutierrez, a spokesperson, said in a statement.

"We take our ratings very seriously and will continue to work with the agencies and our stakeholders over the next many quarters as more information comes to light," he added. "PacifiCorp's ratings remain in line with industry peers, and we will continue to have access to the debt capital markets as we maintain our commitment to investing in renewable energy generation, transmission infrastructure and wildfire mitigation."

In the aftermath of this month's verdict, PacifiCorp filed a request with regulators to track its wildfire costs, the first step in trying to pass them to ratepayers in a later rate case.

That gambit is not likely to succeed, said Bob Jenks, the executive director of the Oregon Citizens' Utility Board, an advocate for residential ratepayers. The jury found that PacifiCorp's conduct was grossly negligent, willful and showed a reckless disregard for residents in communities destroyed by the fires, he noted. And that doesn't meet the "prudent and reasonable" standard that the Oregon Public Utility Commission uses to evaluate whether to put utility costs in customer rates.

He said issuing more debt to fund damages awards would also be scrutinized by regulators for any impact on ratepayers versus shareholders.

PacifiCorp's Weems told jurors at the trial that large damages awards could force it to cut planned capital investments in the utility system, which include $10 billion over the next three years alone. That investment is partially funded by debt and is going into renewable energy facilities to meet regulatory mandates on carbon emissions reductions, as well as transmission and distribution line projects, some designed to increase its system's resilience to wildfire.

"This is not just an issue in Oregon. It's six states." Jenks said, noting that the company also has customers in California, Washington, Idaho, Wyoming and Utah. "What are people in Salt Lake City saying about this? They serve 40% of that state."

McCullough, the energy consultant, said many of the assets on PacifiCorp's balance sheet are heavily depreciated and therefore deeply undervalued. The company could easily sell one of those – say its interest in the transmission lines that carry power between Oregon and California – and raise a huge chunk of money.

"They have a lot of good assets," he said. "Worst case scenario, they could put them up for sale and raise a very large number. The regulatory commission wouldn't be very happy about it, but there's very little they can do to stop a market transaction."

PacifiCorp, of course, is hoping a big chunk of its potential liabilities will be wiped away in an appeal. Part of that appeal will challenge the jury's finding that its power lines were a cause or substantial cause of damage to all the members of the class in the Santiam Canyon, home to about half the properties covered by the lawsuit.

The process could take years. Meanwhile, no one is getting paid other than the company's lawyers.

Robert Julian, a lawyer whose firm is suing PacifiCorp on behalf of victims of the Archie Creek fire east of Roseburg and who has settled fire claims against utilities in California, questioned the company's legal strategy of taking cases to trial. Historically, California utilities haven't taken that risk.

PacifiCorp last year reached a confidential settlement with two families who were victims in the Archie Creek fires days before their case was set to go to trial. Julian contends the company should similarly settle the claims of 215 remaining families and seven timber companies before their consolidated case goes to trial in November, where the plaintiffs are seeking $600 million in economic damages alone.

"If they don't deal with us now," he warned, "the fire victims are going to end up owning the company."

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