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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JEANYNE JAMES, ROBIN COLBERT,
JANE DREVO, SAM DREVO, BROOKE
EDGE AND BILL EDGE, SR., LORI
FOWLER, IRIS HAMPTON, JAMES
HOLLAND, RACHELLE MCMASTER,
KRISTINA MONTOYA, NORTHWEST
RIVER GUIDES, LLC, SHARIENE
STOCKTON AND KEVIN
STOCKTON, VICTOR PALFREYMAN,
PALFREYMAN FAMILY TRUST, AND
DUANE BRUNN, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

PACIFICORP, an Oregon corporation;
and PACIFIC POWER, an Oregon
registered electric utility and assumed
business name of PACIFICORP,

Defendants.

Case No. 20CV33885 (Lead Case) ✓

Case Assigned to: Hon. Steffan Alexander

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION TO
SANCTION**

AMY ALLEN, *et al.*,

Plaintiffs,

v.

PACIFICORP, *et al.*,

Defendants.

Case No. 20CV37430 (Related Case)

SHYLO SALTER, *et al.*,

Plaintiffs,

v.

PACIFICORP, *et al.*,

Defendants.

Case No. 21CV33595 (Related Case)

1 21ST CENTURY CENTENNIAL
2 INSURANCE COMPANY, *et al.*,
3 Plaintiffs,
4 v.
5 PACIFICORP, *et al.*,
6 Defendants.

Case No. 22CV26326 (Related Case)

7 ALLSTATE VEHICLE AND PROPERTY
8 INSURANCE COMPANY,
9 Plaintiffs,
10 v.
11 PACIFICORP, *et al.*,
12 Defendants.

Case No. 22CV29976 (Related Case)

13 FRERES TIMBER, INC., *et al.*,
14 Plaintiffs,
15 v.
16 PACIFICORP, *et al.*,
17 Defendants.

Case No. 22CV29694 (Related Case)

18 MICHAEL BELL, *et al.*,
19 Plaintiffs,
20 v.
21 PACIFICORP, *et al.*,
22 Defendants.

Case No. 22CV30450 (Related Case)

23 MARGARET DIETRICH *et al.*,
24 Plaintiffs,
25 v.
26 PACIFICORP, *et al.*,
27 Defendants.

Case No. 22CV29187 (Related Case)

1 SEAN CADY, *et al.*,

2 Plaintiffs,

3 v.

4 PACIFICORP, *et al.*,

5 Defendants.

Case No. 22CV13946 (Related Case)

6 CLIFFORD LOGAN, *et al.*,

7 Plaintiffs,

8 v.

9 PACIFICORP, *et al.*,

10 Defendants.

Case No. 22CV29859 (Related Case)

11 C.W. SPECIALTY LUMBER, *et al.*,

12 Plaintiffs,

13 v.

14 PACIFICORP, *et al.*,

15 Defendants.

Case No. 22CV41610 (Related Case)

16
17 **I. INTRODUCTION**

18 Plaintiffs submit this supplemental memorandum in further support of Plaintiffs' Second
19 Motion to Sanction, filed February 28, 2023. This supplemental memorandum discusses
20 bombshell evidence relating to the cause of the Labor Day 2020 fires that Plaintiffs learned
21 through third-party discovery on April 5, 2023: PacifiCorp was advised by the State of Oregon
22 on Labor Day 2020 to shut off the power in its service territory west of the Cascades to prevent
23 fires. This evidence was not disclosed by PacifiCorp during discovery.

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**PAGE 1 - PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION TO SANCTION**

1 **II. THE NEWLY-DISCOVERED EVIDENCE**

2 Third-party witness Doug Grafe testified at a deposition initiated in related litigation on
3 April 5, 2023. Grafe was the Oregon Department of Forestry (“ODF”) Chief of Fire Protection
4 on Labor Day 2020. Grafe Tr. at 9:10-13. Key excerpts of the transcript of the Grafe deposition
5 are attached and marked to show testimony that is material to this motion.

6 By way of brief summary, Grafe testified that, after discussion with Grafe, the
7 Governor’s chief-of-staff organized a telephone conference on September 7, 2020, which was
8 Labor Day. Grafe Tr. at 35:6-37:8 and 82:18-83:8. PacifiCorp, PGE and the Bonneville Power
9 Administration (“BPA”) attended the telephone conference, which took place around 8:00 p.m.
10 Grafe Tr. at 40:2-5. There were three PacifiCorp representatives on the call. Grafe Tr. at 40:9-
11 15.

12 **During the conference, PacifiCorp was advised to initiate proactive power shutoffs**
13 **to mitigate the risk of its equipment starting fires.** Grafe Tr. at 91:17-92:7.¹

14 Q. Is it your understanding that there was not authority on that call to
15 mandate or direct that the utilities de-energize their power lines?

16 A. That is my understanding.

17 Q. And that’s different than a request or asking we would like you to de-
18 energize your power lines to avoid power line ignition. Correct?

19 A. That is different, yes.

20 Q. Okay. And do you agree with your previous testimony, and what Nik
21 [Blosser, Chief-of-Staff to Governor] told us, that the point of the call and
22 the message conveyed to the utilities was: Here’s the risk, we’d like you
23 to de-energize your power lines to avoid starting those fire ignitions?

24 A. That’s correct. The word I might use is advise.

25 Grafe Tr. at 91:17-92:7. On questioning from PacifiCorp’s counsel, Grafe confirmed this
26 testimony:

27 _____
28 ¹ These proactive power shutoffs have sometimes been referred to in this proceeding as “PSPS,”
29 or Public Safety Power Shutoffs.

1 Q. Okay. Just to be clear, do you recall if anyone on the call said: Hey
2 utilities, we're advising you to shut off the power to avoid starting fires?

3 A. That would have been the purpose of my briefing, to leave no
4 misconception out there that there is a high potential for power line related
5 fires on the landscape over the next 72 hours. That was clearly understood
6 based on my briefing.

7 Grafe Tr. at 97:6-14.

8 Grafe provided extensive briefing concerning the risk of fire:

9 A. I described the threat as significant from the crest of the Cascades
10 west. **The event was statewide.** We had already experienced a new
11 ignition in southeast Oregon, Klamath. So the potential was statewide
12 but in particular the downslope winds in the canyons is where we were
13 going to see the greatest wind velocities and thus potential for tree
14 failures, limb failures and potential for power line related fires. ...

15 Grafe Tr. at 44:25-45:8 (emphasis added). Grafe felt discouraged at the end of the conference
16 because the utilities only wanted to talk about where existing fires were located, and not have a
17 meaningful conversation about shutting off the power to prevent further fires. Grafe Tr. at
18 47:21-49:3 and 92:8-93:14.

19 **III. PACIFICORP'S SANCTIONABLE CONDUCT**

20 PacifiCorp did not disclose this critical meeting. It defies imagination that this meeting
21 occurred without any paper trail whatsoever, but Plaintiffs can find no document in PacifiCorp's
22 document productions relating to this meeting.² Nor did any PacifiCorp witness, including at the
23 depositions of the corporation, disclose this meeting at deposition. It is highly unlikely that a
24 meeting of this magnitude would be forgotten by all of the relevant witnesses. Grafe testified
25 that he's never forgotten the call, and that during that "really powerful evening" it was "one of
26 the key conversations I had". Grafe Tr. at 54:12-18. Because PacifiCorp withheld this evidence,

² Even utilities that were not participants in the September 7, 2020 call with Grafe and the Governor's office knew about the call within hours, and produced documents concerning the call in related litigation. See Declaration of Nick Kahl In Support of Plaintiffs' Supplemental Memorandum in Support of Plaintiffs' Second Motion to Sanction (attaching document produced in related litigation).

1 Plaintiffs have been deprived of an opportunity to conduct further discovery as to this matter.
2 Plaintiffs' experts have been deprived of this evidence as well.

3 PacifiCorp has been ordered twice, on motions to compel, to disclose all facts known to it
4 concerning the cause and origin of these fires. The Court ruled on June 23, 2022 that
5 "Defendants' witnesses must testify about fire cause or area of origin information for the Labor
6 Day Fires known to them based on their personal knowledge that is independent and separate
7 from any confidential communication within the meaning of OEC 503(1)(b) from Defendants'
8 attorneys or Defendants' lead claims specialist Marlow Vass. This includes testimony about
9 photos, videos, measurements, observations, descriptions, opinions, vegetation, equipment,
10 communications, and documents relating to the same, that are independent and separate from any
11 confidential attorney or lead claim specialist opinions, communications or documents within the
12 meaning of OEC 503." Order Granting Motion to Compel at 2. The Court further ordered
13 PacifiCorp to produce all "communications, and documents relating to the causes and areas of
14 origin of the Labor Day fires *** dated or obtained before September 30, 2020. Then, at the
15 December 27, 2022 hearing on Plaintiffs' second motion to compel, the Court stated: "...
16 Plaintiffs moved to compel deposition testimony from Pacificorp's lead Claims Specialist
17 Marlow Vass about facts known to her and opinions held by her that relate to the cause and
18 origin of the Labor Day fires. Plaintiffs' Motion to Compel is granted. Lead Senior Claims Agent
19 or Specialist Marlow Vass shall testify about facts known to her and opinions held by her that
20 relate to the cause and origin of the Labor Day fires." Hearing Tr. at 4.

21 The undisclosed September 7, 2020 meeting is highly relevant to the cause of the fires.
22 Plaintiffs claim that the fires at issue were caused by PacifiCorp's failure to shut off the power.
23 Until April 5, 2023, Plaintiffs did not know that PacifiCorp was advised by the State of Oregon
24 to shut the power off. This evidence is highly material to establishing that PacifiCorp was
25 negligent, and that their negligence was the cause of the fires. It is also highly material to
26 punitive damages.

**PAGE 4 - PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION TO SANCTION**

1 Plaintiffs took two additional depositions of Vass after the December 27, 2022 order.
2 Plaintiffs completed the deposition of Vass in her personal capacity on January 9, 2023, and took
3 her deposition as a Rule 39 C(6) representative of the corporation on January 27, 2023. In the
4 latter deposition, Vass provided the corporation’s testimony regarding the cause and origin of the
5 fires. Vass was required to testify “as to matters known or reasonably available to the
6 organization,” ORCP 39 C(6), not just known by her, but she did not speak to any other
7 employees to prepare for the deposition. Second Motion to Compel at 8. In three depositions,
8 Vass did not disclose PacifiCorp’s September 7, 2020 telephone conference with the Governor’s
9 Office and ODF Chief of Fire Protection, or that the State had advised PacifiCorp to shut off the
10 power at this critical time in the causation analysis.

11 PacifiCorp was required to prepare a witness to testify about the “proactive de-
12 energization of any powerlines in Your Oregon service territory, whether or not characterized as
13 a PSPS, on September 7 to 10, 2020, the facts and circumstances surrounding any decision to
14 proactively or to not proactively de-energize, the persons involved in making those decisions,
15 and all facts known to each such person that related to the decision to de-energize or to not de-
16 energize.” Dep. Ex. 537, Subject No. 5. A meeting with the Governor’s Office and ODF on
17 September 7, 2020, in which proactive de-energization was specifically discussed and PacifiCorp
18 was advised to de-energize plainly falls within this subject. PacifiCorp designated senior
19 executive Allen Berreth to testify on this subject at deposition on February 10, 2023. Berreth did
20 not disclose the telephone conference with ODF and the Governor’s Office. *See* Berreth Tr. at
21 28:1-30:6. Berreth could not identify any discussion on this topic, only generally that PSPS was
22 a topic of conversation. *Id.*

23 PacifiCorp was also required to prepare a witness to testify about “any external
24 communications between the [PacifiCorp Emergency Operations Center] or its members and any
25
26

**PAGE 5 - PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ SECOND MOTION TO SANCTION**

1 outside entity, including first responders, state agencies, and local governments.”³ Dep. Ex., 537,
2 Subject No. 9. Berreth was also designated to testify on this topic. Berreth did not disclose the
3 September 7 meeting or that PacifiCorp received fire risk information from Grafe and was
4 advised to shut off the power.

5 In addition, PacifiCorp was required to prepare a witness to “[i]dentify any first
6 responders, federal agencies, state agencies, and local governments with whom You initiated
7 communications from September 1-10, 2020, about the Labor Day 2020 windstorm or Labor
8 Day fires; the names of the person with whom You initiated communications; the date of those
9 communications; and the methods of communication.” Dep. Ex. 537. PacifiCorp objected that
10 the subject was “vague, overbroad, and unduly burdensome to the extent it would require the
11 internal interview of dozens of PacifiCorp employees to see if they had any passing conversation
12 with government employee.” *Id.* Obviously, this was not some “passing conversation.”
13 PacifiCorp agreed to provide testimony concerning “corporate communications directed by
14 PacifiCorp’s EOC or management.” *Id.* PacifiCorp designated senior executive Erik
15 Brookhouse, a member of the Labor Day 2020 EOC, to testify on this subject on February 10
16 and 13, 2023. Brookhouse also did not disclose the Labor Day meeting with ODF and the
17 Governor’s office.

18 The cumulative effect of the discovery violations before this Court warrant imposition of
19 the most severe sanctions available. Plaintiffs have been deprived of deposition and document
20 discovery from PacifiCorp that could change the outcome of this lawsuit. It would be unfair to
21 allow PacifiCorp to withhold this evidence during two years of discovery and then present
22 evidence, through its own fact and expert witnesses or even through cross-examination of Grafe,
23

24 ³ This subject was specifically directed to “the EOC that was stood up for the Labor Day 2020
25 windstorm in Oregon and ... the Labor Day Fires.” Dep. Ex. 537, Subject No. 10. “EOC” refers
26 to PacifiCorp’s Emergency Operations Center. It is not disputed that the EOC was initiated as of
1:00 p.m. on September 7, 2020, about seven hours before the telephone conference with the
Oregon Department of Forestry and the Governor’s Office took place.

**PAGE 6 - PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ SECOND MOTION TO SANCTION**

1 in an effort to minimize Grafe’s testimony, when Plaintiffs have been deprived of document and
2 deposition discovery from PacifiCorp about this meeting and why PacifiCorp did not follow the
3 State’s advice to turn off the power on Labor Day.

4 Dated this 7th day of April, 2023.

5 STOLL STOLL BERNE LOKTING
6 & SHLACHTER P.C.

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**PAGE 7 - PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
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**PAGE 8 - PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION TO SANCTION**

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Trial Attorney: Keith A. Ketterling

**PAGE 9 - PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION TO SANCTION**

ATTACHMENT

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR THE COUNTY OF DOUGLAS

ROSEBURG RESOURCES CO.,)
FIA TIMBER GROWTH MASTER,)
LLC, ILLINOIS MUNICIPAL)
RETIREMENT FUND, et al,)

Plaintiffs,)

vs.) No. 22CV09346

PACIFICORP, PACIFIC POWER,)
and DOES 1-50,)

Defendants.)

BE IT REMEMBERED THAT, pursuant to Oregon Rules of Civil Procedure, the videotaped deposition of DOUG GRAFE was taken on behalf of the Plaintiffs, before Gwen Dickson, an Oregon Certified Shorthand Reporter and a Registered Professional Reporter, commencing at the hour of 9:30 a.m. Pacific on the 5th day of April, 2023, 2250 McGilchrist Street SE, Salem, Oregon.

1 cases. 09:31:34

2 MR. DOW: On the line is Stephanie. 09:31:36

3 MS. ZIAO: Stephanie Ziao from the law firm 09:31:36

4 Hueston Hennigan, I am appearing virtually for 09:31:43

5 defendant PacifiCorp I believe in all of the cases 09:31:46

6 that have been listed. 09:31:48

7 MR. CIFRESE: Scott Cifrese. I represent 09:31:50

8 Consumers Power in the Cook and Masso cases. 09:31:54

9 MR. DOW: And Richard. Richard Lane. 09:31:58

10 You're on mute if you're talking. 09:31:58

11 MR. LANE: Richard Lane. General counsel 09:32:00

12 to the governor. 09:32:15

13 MR. DOW: Thank you. 09:32:16

14 It looks like Patrick just joined. 09:32:34

15 Patrick, can you identify yourself for the 09:32:36

16 record? 09:32:39

17 MR. NTCHOBO: Patrick Ntchobo with Edelson 09:32:39

18 PC on behalf of the James plaintiffs. 09:32:45

19 MR. DOW: Thanks Patrick. 09:32:47

20 MR. GRANT: Before we begin can I have the 09:32:50

21 record reflect that although the lead case for this 09:32:51

22 deposition is your case, that Mr. Grafe also 09:32:53

23 received subpoenas for the James and the Masso and 09:32:58

24 the Cook cases from counsel and so that's why there 09:33:02

25 are attorneys here for those cases. 09:33:07

Page 5

1 MR. DOW: Thank you, Mike. 09:33:09
2 * * *
3 DOUG GRAFE,
4 having first been sworn/affirmed by the Oregon
5 Certified Shorthand Reporter,
6 Registered Professional Reporter,
7 testifies as follows:
8 EXAMINATION
9 BY MR. DOW: 09:33:23
10 Q. Good morning, Mr. Grafe. 09:33:23
11 A. Good morning. 09:33:24
12 Q. Can you please state your name for the 09:33:25
13 record? 09:33:26
14 A. Doug Grafe. 09:33:27
15 Q. Do you mind if I call you Doug? 09:33:28
16 A. No problem. 09:33:30
17 Q. Doug, have you ever been deposed before? 09:33:31
18 A. This will be my first deposition. 09:33:34
19 Q. Okay. Great. Well, we're going to make it 09:33:35
20 as easy as possible. There's just a few basic 09:33:38
21 ground rules I'll go over and then we'll get into 09:33:39
22 the meat of the deposition. 09:33:42
23 So do you understand that I'm going to ask 09:33:43
24 you questions and you provide the answers? 09:33:46
25 A. Yes. 09:33:49

Page 6

1 question before we take a break. 09:35:56

2 A. Copy. 09:35:57

3 Q. Trust me, I'm not going to let you take a 09:35:57

4 break if there's a pending question so you really 09:36:01

5 don't have to worry about that one. 09:36:03

6 So do you understand the nature of this 09:36:04

7 deposition concerns events that occurred in the 09:36:08

8 summer of 2020, in particular September 7, 2020? 09:36:13

9 A. Yes. 09:36:16

10 Q. Okay. Who did you work for on September 7, 09:36:16

11 2020? 09:36:22

12 A. I served as the chief of fire protection 09:36:22

13 for the Oregon Department of Forestry. 09:36:25

14 Q. The Oregon Department of Forestry, is that 09:36:28

15 referred to as ODF? 09:36:32

16 A. Yes. 09:36:34

17 Q. What is ODF? 09:36:34

18 A. ODF is a state agency. As the chief of 09:36:37

19 fire protection I was responsible for fire 09:36:43

20 protection on approximately sixteen million acres 09:36:45

21 of lands across the State of Oregon; that's public 09:36:48

22 and private lands. 09:36:51

23 The Department of Forestry has other 09:36:53

24 responsibilities but I was within the fire division 09:36:55

25 of the agency as an executive team member. 09:36:58

1 the operations manager. I'd have to go back. 09:38:29

2 I served I think six years total, in that 09:38:35

3 range, as the chief of fire protection for the 09:38:39

4 Department of Forestry. 09:38:41

5 Q. So as the chief of fire protection for the 09:38:42

6 Department of Forestry, what were your job duties 09:38:46

7 in general in that role? 09:38:48

8 A. Oversight of the protection system on the 09:38:50

9 jurisdiction responsibility we had, as I identified 09:38:53

10 sixteen million acres of fire protection. We had 09:38:57

11 12 protection districts across the state that 09:38:59

12 provided fire protection services on forestry and 09:39:04

13 grazing lands, those responsibilities within the 09:39:09

14 district; provided support to rangeland fire 09:39:12

15 protection associations, which are volunteer 09:39:16

16 associations in the desert, east Oregon; oversight 09:39:18

17 of policy budget implementation and programatic 09:39:25

18 operations for fire protection services. 09:39:30

19 Q. I don't mean to ask a question that may 09:39:33

20 sound obvious but I want to make sure I understand 09:39:36

21 what it is. When you say fire protection what 09:39:38

22 exactly does that mean? Fire protection from what? 09:39:43

23 From any cause of fire? From certain causes of 09:39:46

24 fire? From certain results of a fire? What does 09:39:48

25 fire protection mean in that context? 09:39:51

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1 A. There's a prevention, a readiness, and 09:39:53
2 response functions relative to wildfire. So the 09:39:57
3 prevention components to prevent all causes, 09:40:01
4 human-caused fires that we can, minimize that; to 09:40:06
5 be ready to respond when fires start, whether by 09:40:10
6 lightening or human cause. So we have a state of 09:40:14
7 readiness, an adequate level of protection for our 09:40:19
8 jurisdictional responsibilities, so resources 09:40:22
9 including aviation as its wildfire engines to hand 09:40:25
10 crews, and then fireline leadership. And then the 09:40:32
11 response function which is when the fire starts, do 09:40:34
12 we have an adequate response. Those are the duties 09:40:38
13 of the fire protection division. So prevention, 09:40:42
14 readiness, response. 09:40:44
15 Q. Okay. And as the chief of fire protection 09:40:45
16 were you the person responsible for each of those 09:40:48
17 components, prevention, readiness and response? 09:40:50
18 A. Affirmative. 09:40:53
19 Q. Okay. It seems like from your accent 09:40:53
20 you're not from Oregon, maybe you're from New 09:41:01
21 England; is that right? 09:41:05
22 A. Correct. From Boston. So if I have to 09:41:05
23 articulate something, don't hesitate to, for the 09:41:08
24 record, I can do that. It's not uncommon. 09:41:11
25 Q. That's okay. Went to law school in Boston, 09:41:14

1 management system, emergency manages in place, 09:49:32
2 communications, infrastructure. 09:49:35
3 The tribal members, nine recognized tribes 09:49:38
4 in the State of Oregon, all engage in fire 09:49:42
5 protection at some level. So those are partners in 09:49:44
6 the system. 09:49:48
7 And I would then - then through that 09:49:48
8 system would include down to the contractors where 09:49:52
9 we want a viable and robust firefighting network 09:49:55
10 nationally, so consider the private sector partners 09:50:01
11 in this fire protection system at a state level and 09:50:06
12 a national level. 09:50:10
13 Cities and then nonprofits, of course, 09:50:11
14 local government and nonprofits. And then frankly 09:50:15
15 I'd extend it to the Oregonians, the citizens we 09:50:20
16 serve. I consider everyone has a role in fire 09:50:23
17 protection and readying themselves and our 09:50:27
18 communities to be ready when fire hits. As 09:50:32
19 mentioned earlier, we are a state that experiences 09:50:37
20 fire conditions on an annual basis. 09:50:40
21 Q. I want to ask about some specific partners. 09:50:43
22 Was the governor's office a partner? 09:50:45
23 A. Of course. As an executive branch agency 09:50:49
24 we all answer to the governor's administration. So 09:50:52
25 in that role as a chief of fire protection I would 09:50:56

Page 19

1 reported up to the governor's emergency public 09:50:59
2 safety advisor at that time. 09:51:05
3 Q. And who was that? In 2020 who was that? 09:51:06
4 A. Constantin Sevear. 09:51:09
5 Q. And was the Oregon Public Utilities 09:51:12
6 Commission a partner? 09:51:17
7 A. Public Utility Commission is a member -- 09:51:19
8 one of the members of the Oregon Emergency Response 09:51:21
9 System. So I mentioned DOC and ODOT as one of 09:51:23
10 those but there's many agencies including the PUC. 09:51:29
11 Q. And as far as you know what was the PUC's 09:51:31
12 role in fire protection? 09:51:35
13 A. Each agency under the Oregon Emergency 09:51:36
14 Response System, which is really a mirror of the 09:51:41
15 National Emergency Response System, each agency has 09:51:46
16 what's known as emergency support functions where 09:51:51
17 they lead responses on any risk for wildfire, 09:51:53
18 Department of Forestry and the state fire marshal, 09:51:59
19 Oregon State Fire Marshal, are the lead agencies 09:52:02
20 that emergency support functions for a fire. 09:52:05
21 For utility issues that would be PUC. For 09:52:09
22 transportation issues and emergencies that would be 09:52:12
23 ODOT; for health related issues like a pandemic, 09:52:15
24 that would be Oregon Health Authority. So the 09:52:19
25 national infrastructure, the structure framework in 09:52:23

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1 approximately in the range of probably 40 09:53:56
2 utility-related fires on an annual basis. So of a 09:53:59
3 thousand fires that we responded to as the 09:54:03
4 Department of Forestry, what's that, about four 09:54:06
5 percent? Three-four percent of the fires were 09:54:08
6 utility-related. So there's always lessons learned 09:54:10
7 about ignitions. 09:54:14
8 Part of our responsibility with the 09:54:16
9 Department of Forestry was to identify the cause of 09:54:19
10 fires and then I mentioned prevention as our 09:54:24
11 primary - one of our primary, with readiness and 09:54:27
12 response. We're a learning culture, so how can we 09:54:30
13 collectively learn how to prevent fires, so the 09:54:35
14 utilities play a significant role in that as 09:54:40
15 related to those causes. So I would consider them 09:54:45
16 a partner to help prevent fires. 09:54:47
17 Q. Okay. At the time when you were chief of 09:54:49
18 fire protection did you have an understanding that 09:54:54
19 if an electric utility power line was de-energized, 09:54:56
20 or not energized, that it would not be able to 09:55:02
21 start a wildfire? 09:55:06
22 A. That's affirmative. And the experience 09:55:09
23 would have had, in Oregon at that time, was in the 09:55:12
24 Gorge. I think that's the one, the Columbia River 09:55:16
25 Gorge, that's the area where utilities had taken I 09:55:19

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1 believe action in the past with public safety power 09:55:25
2 shutoffs. 09:55:28

3 Q. What do you mean by public safety power 09:55:30
4 shutoffs? 09:55:33

5 A. A public safety power shutoff is a utility 09:55:33
6 shutting down power to prevent a fire cause. 09:55:37

7 Q. What was the reference to the Gorge? 09:55:43

8 A. The Columbia River Gorge is the one area 09:55:45
9 that I recall is a place where we've had public 09:55:49
10 safety power shutoffs in Oregon. 09:55:56

11 Q. Do you know what utilities that involved? 09:56:00

12 A. I don't know all the utilities. There's 09:56:04
13 the consumer-owned utilities which there's 30 plus 09:56:08
14 in the State of Oregon, transmission, and then 09:56:11
15 investor-owned utilities. So I don't know who 09:56:16
16 covers that entirety, that service. PGE, I 09:56:19
17 believe, covers a good portion of the Gorge; I'm 09:56:24
18 not sure to the extent, how far east they go. 09:56:29

19 Q. And by PGE you're referring to Portland 09:56:32
20 General Electric? 09:56:35

21 A. Affirmative. 09:56:35

22 Q. Do you have a timeframe in mind when you're 09:56:36
23 talking about the Gorge public safety power 09:56:40
24 shutoff? 09:56:43

25 A. For the event, for the event on September 09:56:44

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1 7, 2020, that was my reference there. We learned 09:56:49
2 that day that they had -- they were either 09:56:54
3 considering a public safety power shutoff that day, 09:57:00
4 didn't know the time of it, but I learned that at a 09:57:04
5 1300 briefing. 09:57:08
6 Q. That was PGE? 09:57:08
7 A. Affirmative. 09:57:10
8 Q. And when you say public safety power 09:57:10
9 shutoff, is that also known as PSPS in your 09:57:13
10 experience? 09:57:16
11 A. Affirmative. 09:57:16
12 Q. When you were chief of fire protection did 09:57:17
13 you coordinate directly with utilities about fire 09:57:22
14 prevention measures such as PSPS? 09:57:26
15 A. I do not recall coordinating with 09:57:28
16 utilities in a significant way. I would engage in 09:57:34
17 the district budget meetings and that's where I saw 09:57:37
18 at the district level that partnership occurring, 09:57:41
19 particularly I remember specifically at Cascade 09:57:45
20 district, so east of Salem. I can recall them 09:57:52
21 being a member and engaged in that board. 09:57:59
22 Q. Prior to September 7, 2020, had you ever 09:58:02
23 convened a meeting or call to ask electric 09:58:11
24 utilities to de-energize their lines to avoid a 09:58:16
25 fire ignition? 09:58:21

1 A. I do not, I do not recall convening a 09:58:22
2 meeting or being a part of a statewide meeting of 09:58:26
3 that significance. 09:58:31
4 Q. Prior to September 7. 09:58:33
5 A. Correct. 09:58:34
6 Q. Prior to -- and you don't -- just for 09:58:34
7 clarity. Prior to September 7, 2020 you also don't 09:58:39
8 recall participating in such a meeting; is that 09:58:42
9 right? 09:58:44
10 A. At a site statewide level, no. 09:58:44
11 Q. Okay. How about other than at a statewide 09:58:47
12 level? 09:58:51
13 A. At the local level, so the district level, 09:58:51
14 those utilities -- utilities I recall being engaged 09:58:55
15 with the district budgeting process, being a part 09:59:02
16 of the mobilization plans. So who does the local 09:59:05
17 district call when we're having challenges with 09:59:10
18 power lines or access. Similar experiences with 09:59:14
19 what they would need with landowners, ensuring that 09:59:17
20 they have access to gates to respond to fires. So 09:59:21
21 they were going to build those local partnerships. 09:59:25
22 Q. But let me make sure it's clear. Before 09:59:27
23 September 7, 2020 had you ever been on a call with 09:59:31
24 electric utilities where the specific purpose of 09:59:36
25 the call was to request that they de-energize their 09:59:39

1 power lines because of particular weather 09:59:43
2 conditions to avoid starting a fire? 09:59:46
3 A. No. 09:59:47
4 Q. Okay. Did you have an understanding in 09:59:48
5 September of 2020 what red flag warning conditions 09:59:54
6 meant? 09:59:59
7 A. Yes. 09:59:59
8 Q. And what does -- what was that 09:59:59
9 understanding? 10:00:01
10 A. A red flag warning is an elevation of 10:00:02
11 wildfire -- potential wildfire conditions. It 10:00:07
12 elevates it to a state of awareness and readiness 10:00:10
13 so we can prepare for any weather, any event. 10:00:15
14 Wind, lightning, dry, hazardous fuel conditions, 10:00:20
15 hot temperatures are examples of red flag warnings 10:00:26
16 that we would look for on a daily basis on our 10:00:30
17 daily briefings in readying the state. 10:00:37
18 Q. In September of 2020 what was your 10:00:39
19 understanding about the effect or the potential of 10:00:45
20 a PSPS by an electric utility to prevent power line 10:00:50
21 caused wildfire ignitions? 10:00:56
22 A. I learned of the Public Utility 10:00:58
23 Commission's engagement in that conversation with 10:01:02
24 utilities at 1300 on September 7. I mentioned the 10:01:05
25 Oregon Emergency Response System. I made a call 10:01:13

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1 the evening of the 6th to the director of emergency 10:01:18
2 management requesting OERS, Oregon Emergency 10:01:25
3 Response System, provide a 1300 briefing. That's a 10:01:32
4 standard briefing readying the state for emergency 10:01:37
5 because at that time we definitely saw a high 10:01:41
6 potential of red flags for catastrophic event. 10:01:46
7 Q. And did you see high potential for a 10:01:49
8 catastrophic event that included a power line 10:01:53
9 caused wildfire? 10:01:58
10 A. Absolutely. The wind conditions, the main 10:02:00
11 concern for new ignitions on a wind event like that 10:02:06
12 would be a power line related fire. Trees coming 10:02:11
13 down, taking down power lines or limbs breaking off 10:02:15
14 of trees and making contact with power lines is not 10:02:19
15 uncommon during high wind events. So that was 10:02:24
16 certainly a key risk for human-caused fires. So at 10:02:27
17 the briefing when I heard the Public Utility 10:02:33
18 Commission represent that they're working with the 10:02:37
19 utilities in the State of Oregon to consider public 10:02:40
20 safety power shutoffs, that made good sense to me. 10:02:43
21 And I was content. And at that time they 10:02:48
22 identified that the Columbia River Gorge was an 10:02:53
23 area that there was a consideration for initiating 10:02:56
24 a public safety power shutoff. 10:03:03
25 Q. This was a briefing at 1300, or 1 p.m., on 10:03:05

1 A. No. 10:04:24
2 Q. You mentioned the PUC made some remarks at 10:04:24
3 that briefing? 10:04:31
4 A. Yes. 10:04:31
5 Q. Do you know who from the PUC made those 10:04:31
6 remarks? 10:04:34
7 A. I do not. But we would have a standard 10:04:34
8 agenda. This was not a unique situation. A 1300 10:04:36
9 briefing is standard. So Office of Emergency 10:04:40
10 Management would follow standard protocols and who 10:04:43
11 to invite. The only focus or nuance between any of 10:04:46
12 those briefing is what's the incident about. Is it 10:04:53
13 a public health incident? Then you know that's 10:04:56
14 where the focus is. This was about a weather event 10:04:59
15 and a wind event and so we all received briefing on 10:05:02
16 the weather potential and risks that were facing 10:05:06
17 us? 10:05:10
18 Q. Now September 7, 2020 was Labor Day, so 10:05:12
19 that's Monday. The day before was Sunday, 10:05:15
20 September 6. When did you become -- when did you 10:05:18
21 first recall becoming aware of the risk of a high 10:05:22
22 wind event that the state saw on September 7 and 10:05:25
23 September 8? 10:05:31
24 A. Typical weather events are forecasted with 10:05:31
25 some confidence around five to seven days in 10:05:38

1 advance. So at that time you would have seen an 10:05:41
2 uptick from the Department of Forestry and our 10:05:48
3 prevention partners including the state fire 10:05:51
4 marshal and a nonprofit organization, Keep Oregon 10:05:56
5 Green, getting the message out. 10:05:58

6 Two-fold was really important to us. It 10:06:01
7 is typical during the holiday weekends that we can 10:06:04
8 see an uptick in human activities out and about out 10:06:07
9 in the forest so we're going to target messaging 10:06:11
10 around, you know, be fire safe during these holiday 10:06:14
11 weekends when you're out and about. 10:06:18

12 Five to seven days we would have heard of 10:06:21
13 an east wind event. So I don't know specifically 10:06:23
14 along those days did we target any of our messaging 10:06:26
15 to say: And we have a potential east wind event. 10:06:30
16 We could look at the records there what the media 10:06:34
17 outreach was, but it is typical for us to have a 10:06:38
18 five to seven day window with some confidence but 10:06:42
19 we don't know to the extent. Is it moderate, high 10:06:45
20 or an extreme event? 10:06:48

21 It was Sunday afternoon, the day before 10:06:49
22 Labor Day, that I had good confidence that it's 10:06:55
23 going to be a significant east wind event. East 10:06:58
24 wind events are not uncommon in the fall for 10:07:02
25 Oregon. We do receive east wind events like this, 10:07:06

1 but on the day before Labor Day on Sunday evening 10:07:10
2 as part of the multi-agency coordination group, I'm 10:07:15
3 sorry, I mentioned the Pacific Northwest 10:07:21
4 coordinating group, so federal and state partners, 10:07:23
5 we're in a daily meeting cadence at this time in 10:07:26
6 fire season where we're receiving briefings at 1600 10:07:31
7 daily on the fire situation and the potential 10:07:35
8 moving forward. 10:07:38
9 And that at that event, that evening, 1600 10:07:39
10 event, I felt with confidence that this was going 10:07:42
11 to be a significant event. And that's what 10:07:45
12 initiated me to ask for the Oregon Emergency 10:07:48
13 Response System to stand up so that all emergency 10:07:51
14 responders in the State of Oregon were prepared for 10:07:56
15 an event that was projected to occur some time the 10:08:01
16 evening of Labor Day. 10:08:04
17 Q. Okay. So you had a call with the Pacific 10:08:05
18 Northwest coordinating group at 1600 or 4 p.m. on 10:08:09
19 Sunday. Correct? 10:08:12
20 A. Correct. 10:08:13
21 Q. And then there was a subsequent call on 10:08:15
22 Sunday with the -- am I correct there was another 10:08:17
23 call on Sunday then as well that you had? 10:08:21
24 A. Sorry. 10:08:23
25 Q. Director of emergency management. 10:08:24

1 A. Oh, yes. Following the 1600 briefing that 10:08:26
2 I had with the Pacific Northwest coordination 10:08:30
3 group, I called the Oregon emergency manager to 10:08:32
4 stand up the following day's 1300 briefing. 10:08:41
5 Q. Okay. Who was the Oregon emergency manager 10:08:46
6 at that time? 10:08:51
7 A. Andrew Phelps. 10:08:51
8 Q. Can you spell Phelps? 10:08:54
9 A. P-H-E-L-P-S, I believe. 10:08:54
10 Q. Okay. And so then he did stand up the 1300 10:08:58
11 call? 10:09:05
12 A. Affirmative. 10:09:05
13 Q. On Monday, September 7. Okay. 10:09:06
14 Approximately how long did the 1300 call on 10:09:09
15 September 7 last? 10:09:12
16 A. That's a standard call. I believe it goes 10:09:13
17 an hour as a briefing. 10:09:16
18 Q. What was the next call that you had on 10:09:19
19 September 7 concerning fire protection because of 10:09:24
20 the wind event? 10:09:28
21 A. I would have moved from -- let me back up. 10:09:29
22 We're in a daily cadence with the Pacific 10:09:35
23 Northwest coordinating group. We would have stood 10:09:37
24 up what's referred to as a MAC, multi-agency 10:09:40
25 coordination, which is those nine primary designees 10:09:45

1 in Pacific Northwest coordination group. We stand 10:09:50
2 up a multi-agency coordination group and we have a 10:09:52
3 daily cadence of briefings that start from 0700 10:09:56
4 that end at 2000 at times depending on the nature 10:10:02
5 of the events of the day of fire potential. 10:10:05
6 We would have continued our 1600 briefings 10:10:11
7 that day. 10:10:15
8 Q. Um-hum. 10:10:16
9 A. And I would have learned of what's the 10:10:16
10 latest weather conditions and what's the latest 10:10:21
11 situation on the ground relative to fires. Both in 10:10:25
12 Oregon and Washington. 10:10:32
13 Q. On September 7 did you have a call with 10:10:33
14 representatives from the governor's office and the 10:10:39
15 PUC concerning utility de-energization to prevent 10:10:42
16 wildfires? 10:10:49
17 A. I had a call with the governor's office 10:10:49
18 and utilities. I don't know -- I don't recall if 10:10:54
19 the PUC was in -- that was the evening of the 7th. 10:11:00
20 Q. Did you have a call with the governor's 10:11:04
21 office prior to the call with the utilities to 10:11:07
22 discuss the call with the utilities? 10:11:09
23 A. Yes. I would have been in constant 10:11:12
24 contact with my emergency response advisor 10:11:15
25 Constantin Sevear, continually updating him on 10:11:20

1 activities. 10:11:22

2 Q. What were the nature of your conversations 10:11:25

3 with Mr. Sevear on the 7th concerning the weather 10:11:26

4 conditions and the need for utilities to 10:11:32

5 de-energize to prevent further ignitions? 10:11:35

6 A. So following the 1300 where the state is 10:11:40

7 ready and prepared for fires best we can, would 10:11:45

8 have moved to a 1600 call, a daily cadence with a 10:11:50

9 multi-agency coordination group. Some time after 10:11:54

10 that the event would have reached Oregon. Of 10:11:57

11 course we were following the event throughout the 10:12:01

12 day because it was coming from Canada to Washington 10:12:04

13 and into Oregon. So we could see the progress of 10:12:09

14 the wind event and fire activity that it was 10:12:14

15 initiating in other states, particularly 10:12:19

16 Washington. It reached Oregon some time in the 10:12:23

17 evening as predicted and I would have kept my 10:12:28

18 advisor up to speed, the emergency response 10:12:33

19 advisor, Constantin Sevear, the governor's office 10:12:37

20 up to speed on the progress activity in Oregon. We 10:12:39

21 had a new fire, the first fire to hit us in Oregon, 10:12:43

22 new fire that the wind event initiated was the fire 10:12:48

23 242 fire just north of Klamath Falls. And I don't 10:12:56

24 recall the time of those events but I would have 10:13:02

25 reported up to the governor's office that we've got 10:13:05

1 a new ignition and we're deploying an incident 10:13:09
2 management team to that fire. 10:13:12
3 Q. Okay. Did you -- do you know who Nik 10:13:14
4 Blosser is? 10:13:19
5 A. Yes. 10:13:19
6 Q. Did you understand Nik Blosser was the 10:13:20
7 chief of staff of the Oregon governor's office at 10:13:23
8 the time? 10:13:25
9 A. Yes. 10:13:25
10 Q. Did you call Nik Blosser about requesting 10:13:25
11 the utilities to de-energize their lines? 10:13:30
12 A. I did speak with Nik Blosser on the 10:13:32
13 evening of Labor Day to discuss de-energizing 10:13:34
14 lines, yes. 10:13:43
15 Q. And do you know who else was on the 10:13:44
16 conversation when you spoke with Nik Blosser? 10:13:48
17 A. It was the evening following multiple 10:13:49
18 phone calls into my office from first responders 10:13:54
19 that we were having challenges with downed power 10:13:59
20 lines and evacuations and multiple calls asking me 10:14:02
21 the status of public safety power shutoffs, are 10:14:11
22 those going to happen or not based on what we all 10:14:16
23 heard at 1300. So I had multiple calls regarding 10:14:19
24 what's the status of public safety power shutoffs 10:14:24
25 and can we get power shutoffs in areas that we had 10:14:28

1 downed lines across roads that were impacting 10:14:34
2 evacuations. That initiated me to connect with 10:14:38
3 both Constantin Sevear and chief of staff Nik 10:14:43
4 Blosser with the interest two-fold, frankly, to 10:14:49
5 elevate awareness that our concerns for the day are 10:14:53
6 coming to fruition and I needed them at the highest 10:14:57
7 level to understand we're entering the first few 10:15:01
8 hours of a 72-hour wind event that's going to 10:15:05
9 continue to cause issues like we're experiencing 10:15:09
10 now. And I didn't want any gap in information and 10:15:11
11 understanding of the gravity of that situation up 10:15:15
12 to the top of the chief of staff. 10:15:18
13 Q. Did you want them to get the utilities 10:15:24
14 together so that you could request that they do 10:15:28
15 power shutoff? 10:15:30
16 A. Yeah. Before that moment I had -- 10:15:31
17 Constantin Sevear had connected me with the advisor 10:15:38
18 who works with the utilities. Her name is Kristen 10:15:40
19 - I forget her last name. 10:15:46
20 Q. Sheehan? 10:15:47
21 A. Sheehan, yes. Kristen Sheehan and I were 10:15:48
22 on multiple calls. She was my point of contact to 10:15:52
23 help coordinate shutoffs with utilities around the 10:15:57
24 state. And at one point in the evening I felt like 10:16:04
25 I needed to elevate that further to make sure, at 10:16:10

1 the highest level, Nik Blosser and I briefed 10:16:14
2 personally so the message was clear. When I had 10:16:18
3 described to him what was going on about our 10:16:23
4 potential, the current conditions we're facing, 10:16:26
5 between -- with he and I discussing, he said let's 10:16:31
6 get the utilities on a phone call as soon as 10:16:34
7 possible to ensure their awareness of the 10:16:38
8 situation. 10:16:43
9 Q. Was one of the purposes of that phone call 10:16:43
10 with the utilities to request that they de-energize 10:16:45
11 their power lines to avoid fire ignitions 10:16:49
12 throughout the state? 10:16:52
13 A. For that phone call the objective I chose 10:16:53
14 two-fold. Where we had power lines down we 10:16:58
15 absolutely were requesting can we get these lines 10:17:01
16 shut off so we can evacuate folks. And then two, 10:17:05
17 wanted to ensure that the decision-makers at the 10:17:08
18 power companies understood the gravity of the 10:17:12
19 situation and were briefed so they could consider 10:17:15
20 public safety power shutoffs. And I was curious of 10:17:20
21 what the status of those were on their decisions. 10:17:25
22 Q. Did that call with the utilities happen? 10:17:35
23 A. Yes. 10:17:38
24 Q. When did it happen? 10:17:39
25 A. It was in the evening some time. If I had 10:17:41

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1 to wager a range, between 2000-ish to 2200. It was 10:17:45
2 a long night. But it was in the evening. I would 10:17:54
3 have to check the phone records or anything I have 10:17:57
4 there. 10:18:02
5 Q. Do you have those phone records? 10:18:02
6 A. I don't have my -- I don't have my phone 10:18:04
7 from that date because I moved on to different 10:18:08
8 positions. 10:18:10
9 Q. Who called the meeting? 10:18:11
10 A. Nik Blosser, chief of staff for the 10:18:16
11 governor, organized the call. 10:18:23
12 Q. Okay. You mentioned Nik Blosser, so I've 10:18:25
13 spoken with Nik Blosser about the call with the 10:18:31
14 utilities as well as the, what I'll describe as the 10:18:36
15 pre-communication that he had with you. And what 10:18:39
16 Nik told me was that the purpose of the call with 10:18:45
17 the utilities was to request that the utilities 10:18:51
18 de-energize their lines to avoid fire ignitions. 10:18:54
19 Is that consistent with what you recall? 10:18:58
20 A. Yeah. We wanted to inform -- I think the 10:19:00
21 nuance is I would have followed Nick's lead because 10:19:05
22 I don't have the authority to direct a utility to 10:19:09
23 shut off power. Right? I would have followed 10:19:13
24 Nick's lead in terms of specifically directing or 10:19:17
25 asking the utilities to shut power off in a 10:19:22

1 proactive way, public safety power shutoff. So I 10:19:26
2 felt very comfortable where we had downed power 10:19:29
3 lines that we really needed those lines off to 10:19:33
4 pull. 10:19:36
5 The purpose of the meeting was to advise 10:19:36
6 at an executive level at the utilities to be 10:19:40
7 informed so that they can make a decision. Their 10:19:45
8 responsibility. It's their decision but I didn't 10:19:51
9 have that authority to direct. 10:19:55
10 Q. Sure. In speaking with Nik, Nik agreed 10:19:56
11 that the state didn't have a mandate to tell -- to 10:19:59
12 mandate that they de-energize lines. One of the 10:20:04
13 things that Nik says he does remember is that there 10:20:06
14 needed to be a request not just that they 10:20:11
15 de-energize the lines that had already gone down, 10:20:13
16 but that they de-energize the lines to prevent them 10:20:15
17 from going down and igniting fires. Do you agree 10:20:19
18 with that? 10:20:23
19 A. I agree with that. 10:20:23
20 Q. Okay. And so Nik has also provided us some 10:20:24
21 notes from the meeting that indicate that it 10:20:33
22 happened at 8 p.m., or 2000. Would that be 10:20:36
23 consistent with your memory as well? 10:20:37
24 A. All right. Yeah. 10:20:39
25 Q. You agree with that? 10:20:39

1 A. Yeah. 10:20:41

2 Q. So who was present at the call with the 10:20:41
3 utilities then that happened around eight o'clock? 10:20:52

4 A. Three utilities were present. It was BPA, 10:20:55
5 PGE, and PacificCorp. 10:21:08

6 Q. Do you know if any other utilities were 10:21:14
7 invited to the call? 10:21:16

8 A. I do not know. 10:21:18

9 Q. Nik's notes, and what Nik Provided to us, 10:21:19
10 indicated that Scott Bolton was present from 10:21:28
11 PacificCorp. Is that what you recall? 10:21:30

12 A. All those individuals would have been new 10:21:33
13 to me. I didn't have a relationship there so I 10:21:36
14 don't know. It was three representations from each 10:21:41
15 of those organizations. 10:21:44

16 Q. Did you know who Scott Bolton was? 10:21:45

17 A. No. 10:21:49

18 Q. Did you know who JD Podlesnik was from PGE? 10:21:49

19 A. No. 10:21:55

20 Q. JD Podlesnik was -- Nik noted that JD 10:21:56
21 Podlesnik was there from PGE, and Dave Robertson 10:21:59
22 from PGE; do you know who either of those folks 10:22:02
23 were? 10:22:05

24 A. No. 10:22:05

25 Q. Okay. What Nik told us is that during the 10:22:05

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1 call the request was made to the utilities to 10:22:13
2 de-energize their lines to avoid fire ignitions. 10:22:16
3 Is that what you recall? 10:22:20
4 A. Again, I would have followed Nick's lead 10:22:20
5 on how that was articulated because it wasn't my 10:22:27
6 authority to direct; but I prepared, in that 10:22:32
7 conversation, everybody to understand the gravity 10:22:35
8 of the situation and advised that more fires will 10:22:38
9 occur from utilities; with the wind there's high 10:22:43
10 potential for that to occur. So I don't recall if 10:22:48
11 I specifically said requested or directed the 10:22:53
12 utilities to shut power off proactively at that 10:22:58
13 point. I would have allowed -- that would have 10:23:04
14 been a higher level with Nik Blosser to navigate 10:23:07
15 that conversation. So I provided the briefing to 10:23:11
16 make everyone aware that that potential is 10:23:14
17 significant. 10:23:17
18 Q. If Nick's recollection is that the 10:23:17
19 utilities - the request was made to de-energize 10:23:24
20 because of the fire ignition, are you disputing 10:23:27
21 Nick's memory? 10:23:31
22 MR. GRANT: Hold one for a second. 10:23:34
23 Are you asking him if he remembers, first 10:23:40
24 of all, what was said? I thought we've already 10:23:42
25 covered that he doesn't remember. 10:23:46

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1 Q. Was it stated to the utilities what the 10:24:42
2 purpose of the call was? 10:24:47

3 A. I would assume -- Nik Blosser opened up 10:24:48
4 the meeting for the purpose of the call. 10:24:59

5 Q. And what was the purpose of the call that 10:25:01
6 Nik opened with? 10:25:04

7 A. To inform the utilities, provide a 10:25:04
8 briefing to the utilities on what I briefed Nik 10:25:11
9 Blosser on, which was the conditions, fire 10:25:15
10 conditions on the landscape and the potential for 10:25:21
11 more fire ignitions from utilities. 10:25:25

12 Q. And was it conveyed to the utilities that 10:25:30
13 if they de-energized their lines they can avoid 10:25:34
14 those potential fire ignitions? 10:25:37

15 A. Yes. That would have been clear. 10:25:39

16 Q. Okay. Because otherwise what would be the 10:25:41
17 point of the call. Right? 10:25:43

18 A. Correct. 10:25:44

19 Q. Did you feel it was made clear to the 10:25:52
20 utilities in the call that they were being 10:25:54
21 requested to de-energize their lines to avoid fire 10:25:59
22 ignitions? 10:26:02

23 A. I feel like that meeting that the 10:26:05
24 utilities had a -- that message was clear to them, 10:26:10
25 that they -- they're well-informed that turning 10:26:14

1 power off would have decreased the potential for 10:26:24
2 new ignitions across the State of Oregon. 10:26:29

3 Q. How long did the call last? 10:26:33

4 A. Fifteen minutes. In that range. I don't 10:26:36
5 know specifically. Felt like about that. 10:26:45

6 Q. Did anyone from the state, and by the state 10:26:48
7 I'm referring to your office, the governor's 10:26:59
8 office, anyone other than you and Nik Blosser 10:27:02
9 speak? 10:27:05

10 A. I believe there was an introduction from 10:27:09
11 -- I recall it as an introduction from Nik Blosser, 10:27:14
12 a briefing from me, and then conversation between 10:27:18
13 myself, Nik and the three utilities. 10:27:22

14 Q. Okay. When it was conveyed to the 10:27:25
15 utilities that if they de-energized their lines 10:27:28
16 that could help prevent further power line caused 10:27:32
17 ignitions, what was the response from the 10:27:36
18 utilities? 10:27:39

19 A. They wanted to know where existing fires 10:27:40
20 were occurring. They wanted to know how many 10:27:45
21 fires, how significant were they, were they large 10:27:49
22 fires, where are they at, and where's the greatest 10:27:56
23 potential for risk of future fires by utilities. 10:28:00

24 Q. Did you provide that information? 10:28:09

25 A. I described the threat as significant from 10:28:12

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1 the crest of the Cascades west. The event was 10:28:17
2 statewide. We had already experienced a new 10:28:22
3 ignition in southeast Oregon, Klamath. So the 10:28:27
4 potential was statewide but in particular the 10:28:32
5 downslope winds in the canyons is where we were 10:28:35
6 going to see the greatest wind velocities and thus 10:28:38
7 potential for tree failures, limb failures and 10:28:43
8 potential for power line related fires. 10:28:45
9 So I expressed what I knew of the existing 10:28:50
10 fires on the ground, what we were operating on, and 10:28:55
11 where the threat was. So yes, I answered those 10:29:00
12 questions the best I could. 10:29:04
13 Q. Okay. And was it conveyed to the utilities 10:29:05
14 that the threat that you described could be 10:29:08
15 mitigated if they de-energized their lines in those 10:29:11
16 areas? 10:29:14
17 A. Absolutely. 10:29:14
18 Q. Okay. Now there were three utilities on 10:29:15
19 the call. Correct? BPA, PacifiCorp and PGE. 10:29:20
20 A. Affirmative. 10:29:24
21 Q. Did PacifiCorp agree to de-energize its 10:29:25
22 lines during that call? 10:29:30
23 A. During the call nobody indicated that they 10:29:32
24 were going to initiate a public safety power 10:29:42
25 shutoff other than, my recall, was that acknowledge 10:29:45

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1 at that time that the Columbia Gorge was shut off, 10:29:53
2 if I'm remembering that correctly. 10:29:58
3 Q. And that was PGE. Right? Portland 10:30:00
4 General. 10:30:03
5 A. Correct. 10:30:03
6 Q. What did PacifiCorp say - again, Nik 10:30:04
7 Blosser's notes indicate it was Scott Bolton, and 10:30:10
8 that's what Nik told us, too - what did PacifiCorp 10:30:11
9 say about what they were doing with respect to 10:30:14
10 power shutoffs to avoid wildfire ignitions at that 10:30:17
11 point? 10:30:21
12 A. I do not recall any specifics around any 10:30:21
13 analytics that they were working through to 10:30:30
14 determine any thresholds that would trigger public 10:30:31
15 safety power shutoff. 10:30:36
16 Q. Did they -- did PacifiCorp's representative 10:30:39
17 provide you with any information that they had as 10:30:42
18 far as what they were looking at power 10:30:45
19 shutoff-related? 10:30:49
20 A. No. 10:30:50
21 MR. GRANT: Counsel, it's been an hour, 10:30:56
22 could we take a break here? 10:30:58
23 MR. DOW: Good time for a break. 10:30:59
24 (RECESS is taken, 10:30 to 10:47 a.m.) 10:31:02
25 BY MR. DOW: 10:31:02

1 Q. Doug, do you recall - this is not a test - 10:47:39
2 approximately how many acres statewide were burned 10:47:43
3 because of the Labor Day fires? 10:47:49
4 A. Just over a million acres. 10:47:51
5 Q. Do you have an approximate recollection of, 10:47:54
6 in general, of lives lost in the state because of 10:47:58
7 the fires? 10:48:00
8 A. Nine lives lost. 10:48:01
9 Q. How about an approximate recollection of 10:48:03
10 properties destroyed? Structures destroyed. 10:48:07
11 A. Between four and five thousand structures. 10:48:10
12 Q. Do you recall, during the call with the 10:48:15
13 utilities on the 7th, Nik Blosser being frustrated 10:48:19
14 because the utilities, PacifiCorp in particular, 10:48:24
15 were not committing to do power shutoffs to prevent 10:48:30
16 powerline-caused ignitions? 10:48:35
17 A. I don't recall anyone being - at the 10:48:36
18 meeting I didn't see frustration or hear 10:48:39
19 frustration. It was a professional conversation 10:48:42
20 and I didn't take note of any frustrations. 10:48:46
21 Q. Nik told us that he was frustrated at the 10:48:50
22 meeting because he wasn't getting commitments from 10:48:53
23 PacifiCorp to de-energize. Did he convey his 10:48:57
24 frustration to you other than in the meeting? 10:49:02
25 A. After the meeting at some point I don't 10:49:05

1 recall if we chatted, I suspect we would have 10:49:09
2 briefed directly after, but at the end of the 10:49:14
3 meeting when we hung up and I moved on I shared I 10:49:19
4 was discouraged based on the conversation. 10:49:26
5 Q. Why were you discouraged? 10:49:29
6 A. I was hoping for a more proactive 10:49:31
7 conversation about these are the things we're 10:49:36
8 looking at, don't worry, Doug, we've got this. 10:49:40
9 We're paying attention to this. Here's our 10:49:43
10 thresholds. Here's what our data says about winds 10:49:46
11 in different areas of the state and we're 10:49:49
12 considering power shutoff here or there if we -- if 10:49:54
13 it elevates another ten degrees, 20 degrees, 10:49:58
14 whatever those thresholds would be based on 10:50:01
15 whatever experience they have in terms of damage to 10:50:03
16 their lines. But the tone in the conversation was 10:50:08
17 one way. Where's the fires? Where's the threat? 10:50:13
18 Can you show us that? Can you bring to bear that 10:50:17
19 information? As opposed to a joint conversation 10:50:20
20 recognition of the risk and proactive conversation, 10:50:29
21 how can we help, what's our role in this. I didn't 10:50:32
22 see a sense at that moment, right, at an evening 10:50:38
23 call, that there was an active engagement and 10:50:43
24 consideration ongoing of thresholds for public 10:50:49
25 safety power shutoffs. So at the end of the call I 10:50:53

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1 was discouraged myself. I can't speak for Nik. I 10:50:56
2 don't recall he and I -- him stating that to me 10:51:01
3 after or during. 10:51:04
4 Q. Did you and Nik have a separate 10:51:06
5 conversation or call then after the call with the 10:51:09
6 utilities? 10:51:11
7 A. I don't recall. I would have been with 10:51:11
8 the governor and the governor's office every day 10:51:21
9 for - and maybe multiple times throughout - 10:51:22
10 certainly the 72 hours of the event and beyond 10:51:29
11 obviously because it carried forward for another 10:51:34
12 month long of fire activities. But I don't recall 10:51:39
13 specifically if we had one immediately after that 10:51:42
14 or not. 10:51:50
15 Q. In light of the destruction that those 10:51:51
16 fires caused have you ever thought since then if 10:51:55
17 the utilities, namely PacifiCorp, had de-energized 10:52:00
18 their lines as requested in that call that much of 10:52:04
19 the Labor Day fire destruction might have been 10:52:07
20 avoided? 10:52:10
21 MS. ZIAO: Object that it mischaracterizes 10:52:13
22 testimony about the call and assumes facts. 10:52:16
23 Q. You can answer. 10:52:20
24 A. Can you repeat the question? 10:52:21
25 Q. Sure. Since then and in light of all the 10:52:26

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1 Q. But you are still involved, maybe even 10:54:17
2 moreso, in wildfire prevention, fire mitigation 10:54:19
3 efforts. Correct? 10:54:24
4 A. Affirmative. 10:54:25
5 Q. To what extent does the Labor Day 2020 10:54:25
6 experience and the absence of the PSPS power 10:54:35
7 shutoffs as requested stand out as a lesson 10:54:41
8 learned, i.e. something to be avoided going forward 10:54:44
9 as you try to prevent future wildfires? 10:54:49
10 A. That's a significant lesson learned. 10:54:53
11 Q. How so? 10:54:59
12 A. I mean, you would have to go back to the 10:55:01
13 record on how many causes were actually from wind 10:55:06
14 and utilities in those events and you start to look 10:55:15
15 at those fires and say those wouldn't have existed 10:55:18
16 if we hadn't, you know, no energized lines in those 10:55:21
17 spaces. It's significant. But that's what I would 10:55:26
18 offer, those are the things I think about. Haven't 10:55:30
19 done that calculation. 10:55:34
20 Q. I'm going to introduce an exhibit here. 10:55:37
21 (EXHIBIT marked. Exhibit 055-001.) 10:56:02
22 Q. Doug, you're the 55th witness in this case 10:56:03
23 so you're exhibits are all marked with the number 10:56:07
24 55. Just give me a moment because I'm going to 10:56:11
25 introduce this online to the folks who are joining 10:56:20

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1 A. I do not recall. 10:58:20
2 Q. Do you recall if you texted Nik at all 10:58:22
3 during that call? 10:58:26
4 A. I don't recall. 10:58:27
5 Q. Do you have any -- other than not being 10:58:28
6 able to recall, do you have any reason to dispute 10:58:32
7 that you would have texted him "great question" at 10:58:35
8 8:23 p.m.? 10:58:38
9 A. No reason. 10:58:39
10 Q. Okay. And do you recall Nik saying 10:58:40
11 something in general like what is quoted in his 10:58:44
12 personal journal here? 10:58:47
13 A. Could you ask that again? Are you 10:58:52
14 referencing what you read or -- 10:58:55
15 Q. Yeah. Good question. My apologies for 10:58:56
16 being confusing. 10:58:59
17 The quote on the first three lines of the 10:58:59
18 journal entry about our fire chief telling us he's 10:59:03
19 worried about power lines starting fires, do you 10:59:06
20 recall Nik saying something to that effect to the 10:59:10
21 utilities and that's why we assembled you here on 10:59:12
22 this call? 10:59:15
23 A. Yes. That seems consistent with what I 10:59:15
24 remember of the conversation. 10:59:19
25 Q. Okay. 10:59:19

1 able to convince them in that call to de-energize 11:00:57
2 their power lines to avoid power line-caused fire 11:00:59
3 ignitions? 11:01:02
4 MS. ZIAO: Object that the question assumes 11:01:04
5 facts. 11:01:10
6 A. Can you repeat the question? 11:01:12
7 Q. Sure. You heard what I said about Nik 11:01:13
8 describing his greatest failure. 11:01:19
9 A. Yes. 11:01:20
10 Q. How would you describe it in your role as 11:01:20
11 chief of fire protection in not being successful in 11:01:22
12 convincing the utilities in that call to 11:01:26
13 de-energize their power lines to void power 11:01:30
14 line-caused ignitions? 11:01:33
15 A. I have a lot of emotions on that call. I 11:01:36
16 felt like I was doing my due diligence to elevate 11:01:39
17 the conversation to decision-makers, so I'm pleased 11:01:42
18 that I did the work to inform decision-makers on 11:01:47
19 this. I know that's a difficult decision to shut 11:01:53
20 off power. There's other factors involved there. 11:01:58
21 I feel like from my role I did my part in informing 11:02:07
22 those ultimate decisions. I will reiterate I did 11:02:16
23 -- I was discouraged at the end of it because I 11:02:19
24 didn't see a pathway immediately. I didn't gain 11:02:25
25 confidence immediately that utilities were to take 11:02:31

1 action on public safety power shutoffs more broadly 11:02:34
2 across the state and I knew that potential for 11:02:38
3 additional fires was to continue over the next 11:02:42
4 60-plus hours at that point. 11:02:47
5 Q. This may seem like an obvious question but 11:02:49
6 do you wish you had convinced them and gained the 11:02:54
7 commitment from them, the utilities that is, to 11:02:59
8 de-energize their power lines in that call to 11:03:02
9 prevent powerline-caused ignitions? 11:03:04
10 A. Yeah, I would have loved to see more 11:03:07
11 public safety power shutoffs implemented across the 11:03:11
12 state. 11:03:18
13 Q. Did you provide either Nik Blosser or 11:03:19
14 anybody else a written summary, whether by text, 11:03:22
15 e-mail, et cetera, of the fire danger and the need 11:03:28
16 for PSPS that night? 11:03:33
17 MR. GRANT: Can you clarify that? 11:03:37
18 MR. DOW: Sure. That was a confusion 11:03:38
19 question. 11:03:40
20 MR. GRANT: Two parts to it. 11:03:40
21 Q. Okay. Did you provide Nik Blosser with any 11:03:41
22 written summary as to the severity of the fire 11:03:44
23 danger on September 7, 2020? 11:03:48
24 A. Yes. At 1100 hours-ish, somewhere earlier 11:03:52
25 that morning prior to the 1300 call, I would have 11:03:59

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1 sent a broad e-mail to all legislators in Oregon, 11:04:04
2 governor's office, colleagues in my listserv, 11:04:15
3 essentially those engaged in wildfire, an e-mail 11:04:22
4 that described the potential that was to come to 11:04:26
5 Oregon that evening and that was sparked by two 11:04:30
6 things. It's typical for me to send an 11:04:35
7 all-legislative e-mail throughout the fire season 11:04:38
8 to inform Oregon around the potential threat 11:04:42
9 adjustments during fire season. I typically send 11:04:49
10 about eight all-call e-mails, I'll call them, to 11:04:52
11 the legislature, the beginning of fire season, the 11:04:56
12 end, and depending on significant activity 11:04:58
13 throughout the season. And chief of staff Nik 11:05:01
14 Blosser would have been on that e-mail list as 11:05:06
15 executive branch leadership. So I would have cc'd 11:05:11
16 a big group. 11:05:15
17 But I described the threat at about 1100 11:05:16
18 hours so that was prior to the 1300 call with all 11:05:19
19 emergency managers. 11:05:24
20 Q. Did you provide any written summary to Nik 11:05:27
21 Blosser or anyone else that day about the need for 11:05:32
22 public safety power shutoffs? 11:05:35
23 A. I don't recall if I identified that as a 11:05:38
24 request within my e-mail. 11:05:41
25 Q. You've described this event as a east wind 11:05:44

1 event. And what is an east wind event? 11:05:52

2 A. An east wind event is significant wind 11:05:59

3 event that comes from the east. These are typical 11:06:04

4 events in our fall and they are dry and they bring 11:06:09

5 warm weather, so they impact fuel conditions, so 11:06:13

6 they take moisture out of fuel conditions to make 11:06:17

7 them more readily available for consumption by 11:06:20

8 fire, and they drive fire conditions because wind 11:06:23

9 is a significant factor in fire behavior. 11:06:28

10 Q. Does that -- you mention that they are 11:06:32

11 typical in the fall, does that also apply on a date 11:06:35

12 like September 7? 11:06:38

13 A. Not specific to any date. But September, 11:06:39

14 October, November are typical months that we're 11:06:44

15 really paying attention to the weather conditions 11:06:48

16 and looking for that forecast of an east wind out 11:06:53

17 five to seven days so we know how to prepare and 11:06:59

18 organize. 11:07:04

19 Q. How does an east wind event that's 11:07:04

20 downslope coming through the canyons heighten fire 11:07:08

21 risk associated with power lines? 11:07:14

22 A. The connection with potential powerline 11:07:16

23 ignition is it increases the potential for 11:07:20

24 powerline ignitions due to trees falling or limbs 11:07:22

25 breaking out of trees and making contact with 11:07:28

1 powerlines and that creates sparks and the right 11:07:30
2 fuels with that wind behind it can drive fire 11:07:37
3 behavior significantly. 11:07:40
4 Q. Is there a difference between a downslope 11:07:41
5 east wind event in September, October, November and 11:07:45
6 the associated fire risk as compared to wind out of 11:07:50
7 the west? 11:07:55
8 A. Winds out of the west often have a 11:08:02
9 moisture component to it. They are coming off the 11:08:08
10 ocean and what that heightens the risk of lightning 11:08:10
11 conditions because lightning is created from uplift 11:08:14
12 and heat that is from the land so you'll see an 11:08:18
13 uplift and you provide the moisture potential and 11:08:23
14 we have lightning which creates a whole different 11:08:26
15 set of challenges in terms of emergency response. 11:08:29
16 An east wind event typically does not come with 11:08:33
17 lightning. It's really the weather, the wind is 11:08:37
18 the key driver of what drives a red flag warning 11:08:39
19 for that day. 11:08:43
20 Q. Did you come to learn that Portland 11:08:46
21 General, or PGE, did do a PSPS around the Mt. Hood 11:08:56
22 area on September 7 and 8? 11:09:05
23 A. I did come to learn that they initiated a 11:09:08
24 PSPS; I don't recall when I learned it. It may 11:09:12
25 have been at this evening call referenced with Nik 11:09:17

1 But that's a validation through Oregon Emergency 11:29:27
2 Management. 11:29:32
3 Q. When you said that's a validation through 11:29:33
4 Oregon Emergency Management, what does that mean to 11:29:37
5 a non-government person? 11:29:38
6 A. If you want to just know the roster who 11:29:39
7 gets invited to those calls I can't -- I would 11:29:42
8 encourage you to connect with the emergency 11:29:46
9 management. 11:29:48
10 Q. You testified a couple times that you 11:29:48
11 testified, I think, I wrote down the word gravity 11:29:55
12 of the situation on September 7. Can you explain 11:29:57
13 to me from your perspective at least what you 11:30:02
14 remember that gravity as being? 11:30:04
15 A. The evening of the 6th, so on the briefing 11:30:09
16 we received at 1600 we would have been informed at 11:30:19
17 the multi-agency coordination group that it's an 11:30:25
18 extreme event. So that's number one. It's not a 11:30:30
19 moderate east wind event. This is going to be very 11:30:36
20 significant. That prompted my initiation of the 11:30:39
21 Oregon emergency response system 1300 the following 11:30:43
22 day. 11:30:48
23 But it was watching the event take place 11:30:49
24 in Washington that sparked me to type an e-mail for 11:30:53
25 my listserv and the legislators because you could 11:31:01

1 see the reality of the situation coming into play 11:31:04
2 in Washington and as that front moves south and 11:31:08
3 into Oregon you could expect similar fire activity. 11:31:12
4 And there was a fire, a new fire start in 11:31:16
5 Washington; I believe it ran in the range of 50 11:31:21
6 miles that day, that morning. So we had some 11:31:24
7 sense. And that's in eastern Oregon and lighted 11:31:29
8 fuels, different conditions than what we faced for 11:31:33
9 the crest of the Cascade west, but however it gives 11:31:35
10 an early indication of what we're predicting in the 11:31:37
11 weather is landing in reality of fire behavior for 11:31:42
12 the day. 11:31:46

13 So that was one. When you say gravity of 11:31:46
14 the situation, that it resonated with, you know, 11:31:49
15 that morning, yup, it's a significant event that 11:31:53
16 puts life safety paramount as our mission. 11:31:57

17 Q. When it comes to the fire that weekend was 11:32:03
18 there one particular person or agency that was 11:32:10
19 responsible for trying to anticipate fire behavior? 11:32:12
20 In other words, what that fire was going to do. 11:32:17

21 A. Which fire? 11:32:23

22 MR. GRANT: Which? 11:32:24

23 Q. So I've heard them referred to as the 11:32:24
24 Beachie Creek fire, the Lionshead fire, Santiam 11:32:28
25 Complex, Santiam fire. But I think most often we 11:32:31

1 involved as you look at the span of that event up 11:42:35
2 through the canyon. And of course the forest 11:42:38
3 service and federal partners who were engaged on 11:42:43
4 that scene. 11:42:47
5 I don't recall any -- the fire service, 11:42:49
6 local fire departments would have been significant 11:42:53
7 in that response also. And local emergency 11:42:57
8 managers. 11:43:01
9 Q. And just so I'm clear, what was your 11:43:01
10 understanding of how downed power lines interfered 11:43:06
11 with ODF's efforts on the evacuation front? 11:43:10
12 A. That evening I was receiving calls 11:43:14
13 regarding the Santiam Canyon and we had downed 11:43:20
14 power lines interrupting evacuations. And I heard 11:43:25
15 we had a fire within the fire camp from downed 11:43:31
16 power lines. The incident management team was 11:43:34
17 actively engaged within Gates fighting emerging 11:43:37
18 fires that firsthand accounts identified related to 11:43:42
19 power line entries. 11:43:48
20 Q. Have you ever, in all your years in fire 11:43:51
21 work, have you encountered a wildfire that caused 11:43:55
22 the evacuation of an incident management team like 11:43:58
23 that? 11:44:00
24 A. Yes. 11:44:00
25 Q. When was that? 11:44:01

1 (RECESS is taken, 12:09 to 12:13 p.m.) 12:09:48
2 FURTHER EXAMINATION 12:09:48
3 BY MR. DOW: 12:13:58
4 Q. Doug, just a few final questions before we 12:13:58
5 get you out of here. 12:14:00
6 Just want to clear something up between - 12:14:02
7 the difference between mandate or direction and a 12:14:03
8 request. I think everyone - I want to make sure 12:14:07
9 everyone's clear that you agree, we all agree, Nik 12:14:11
10 agreed, the PUC agreed, no one from the state 12:14:14
11 government had the authority to mandate or direct 12:14:17
12 that the utilities de-energize their lines on 12:14:21
13 September 7, 2020; is that right? 12:14:23
14 MR. GRANT: Hold on. Are you asking what 12:14:26
15 his understanding of everybody else is? 12:14:29
16 MR. DOW: Let's keep it clean. 12:14:31
17 Q. Is it your understanding that there was not 12:14:32
18 authority on that call to mandate or direct that 12:14:38
19 the utilities de-energize their power lines? 12:14:42
20 A. That is my understanding. 12:14:47
21 Q. And that's different than a request or 12:14:49
22 asking we would like you to de-energize your power 12:14:52
23 lines to avoid power line ignition. Correct? 12:14:55
24 A. That is different, yes. 12:14:59
25 Q. Okay. And do you agree with your previous 12:15:00

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1 testimony, and what Nik told us, that the point of 12:15:03
2 the call and the message conveyed to the utilities 12:15:06
3 was: Here's the risk, we'd like you to de-energize 12:15:09
4 your power lines to avoid starting these fire 12:15:13
5 ignitions? 12:15:16
6 A. That's correct. The word I might use is 12:15:17
7 advise. 12:15:20
8 Q. Sure. Okay. So when you did that in the 12:15:22
9 call, when you gave that advice or advised, to 12:15:26
10 de-energize to avoid the power line ignitions, and 12:15:31
11 you got the responses from the utilities, how did 12:15:35
12 you feel about the posture of their response or the 12:15:43
13 tone of their response in that conversation? 12:15:46
14 A. I think I used the word earlier 12:15:50
15 discouraged at the end of the call. And that's how 12:15:52
16 I felt overall. 12:15:56
17 Q. During the call when the utilities were 12:16:00
18 advised to de-energize their power line to avoid 12:16:05
19 power line ignitions, what about the tone of their 12:16:08
20 response caused you to be discouraged? 12:16:13
21 A. It was a defensive posture is how I would 12:16:18
22 describe it in the conversation with the utilities. 12:16:23
23 Q. Would that include PacifiCorp's 12:16:27
24 representatives? 12:16:29
25 A. Yes. One distinction I would acknowledge 12:16:32

1 is I didn't know any of the individuals going into 12:16:36
2 the call and at this time I don't remember who 12:16:41
3 exactly questioned what among the utilities; so 12:16:50
4 overall I'll answer that yes, the utility posture 12:16:55
5 was defensive. 12:16:58
6 Q. Okay. Would it be fair to say the 12:16:59
7 utilities - aside from the fact that PGE did 12:17:02
8 de-energize in the Mt. Hood area - were not seeming 12:17:05
9 to be receptive to de-energizing to avoid power 12:17:11
10 line ignitions? 12:17:14
11 A. That's a fair assessment of the phone 12:17:16
12 call, the tone of the phone call; that's how I felt 12:17:20
13 leaving the phone call so that's where I use the 12:17:24
14 word I was discouraged at the end. 12:17:26
15 Q. Okay. Just a few more here. 12:17:28
16 You mention the Gates school fire where the 12:17:35
17 incident command was, and that would be in the 12:17:40
18 Santiam Canyon area. I want to make sure I heard 12:17:44
19 your testimony correctly that the Gates school 12:17:46
20 fire, do you understand that that fire was caused 12:17:50
21 by a power line that came down? 12:17:52
22 A. We had firsthand witnesses that identifies 12:17:58
23 trees and power lines that ignited fires within the 12:18:04
24 incident management camp at Gates and that my 12:18:10
25 understanding is that would be members of the 12:18:15

1 incident command team assigned on that fire that 12:18:17
2 evening. 12:18:21

3 Q. And would it be fair to say that that would 12:18:22
4 be the exact type of risk that you were warning or 12:18:25
5 advising the utilities of including PacifiCorp on 12:18:29
6 that September 7 call? 12:18:33

7 A. Absolutely. 12:18:35

8 Q. Okay. In all your years have you ever seen 12:18:37
9 an incident command center be evacuated because of 12:18:42
10 a power line-caused fire? Other than the one at 12:18:46
11 Gates. 12:18:52

12 MR. GRANT: Can you -- 12:18:54

13 MS. ZIAO: Objection; assumes facts. 12:18:56

14 MR. GRANT: I guess I'm trying to figure 12:18:59
15 out -- 12:19:01

16 MR. DOW: Let me rephrase it. 12:19:01

17 Q. You testified earlier you'd seen incident 12:19:02
18 command centers evacuated because fire behavior 12:19:05
19 shifts. Right? Same idea, different question. In 12:19:07
20 all those years have you ever seen an incident 12:19:15
21 command center have to be evacuated because a power 12:19:17
22 line came down and started a fire in the proximity 12:19:22
23 of the incident command center other than the one 12:19:25
24 that happened at Gates? 12:19:27

25 MS. ZIAO: Objection; assumes facts. 12:19:29

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1 already had my turn. I'll wait. 12:20:56

2 MR. BERNE: Michael, I was just going to 12:21:02

3 let you know that the plaintiffs in the James case 12:21:03

4 don't have any questions at this time. 12:21:05

5 MR. GRANT: Thank you, Mr. Berne. 12:21:07

6 MS. ZIAO: Okay. So I guess it's just me 12:21:08

7 again. Sorry. 12:21:11

8 FURTHER EXAMINATION 12:21:11

9 BY MS. ZIAO: 12:21:11

10 Q. I just have one or two more questions just 12:21:13

11 about your earlier testimony just now about the 12:21:16

12 September 7 evening call with the governor's office 12:21:19

13 and the various utilities. 12:21:23

14 So I know you had this back and forth about 12:21:26

15 the difference between request versus advice and I 12:21:28

16 just want to again better understand what was 12:21:33

17 actually said on the call. Did Mr. Blosser or you 12:21:37

18 or anyone else in the call actually tell the 12:21:40

19 utilities to please de-energize your power lines to 12:21:46

20 avoid starting fires? 12:21:52

21 A. I don't remember those exact words. But 12:21:56

22 the tone of the call was to inform the utilities 12:22:00

23 that that potential is there and we're faced with 12:22:06

24 that risk and high potential over the next 72 12:22:11

25 hours. And at the end of the call I didn't see a 12:22:14

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1 pathway based on the conversation that that was -- 12:22:23
2 that that counsel, that advice was going to lead 12:22:29
3 immediately to action. But I don't recall anyone 12:22:35
4 stating exactly directing -- directing the 12:22:40
5 utilities to shut power off. 12:22:45

6 Q. Okay. Just to be clear, do you recall if 12:22:49
7 anyone on the call said: Hey utilities, we're 12:22:52
8 advising you to shut off the power to avoid 12:22:56
9 starting fires? 12:23:00

10 A. That would have been the purpose of my 12:23:01
11 briefing, to leave no misconception out there that 12:23:04
12 there is a high potential for power line related 12:23:15
13 fires on the landscape over the next 72 hours. 12:23:22
14 That was clearly understood based on my briefing. 12:23:28

15 Q. Okay. And I'm sorry to keep pressing this 12:23:32
16 but did you -- did you use the words, I'm advising 12:23:35
17 the utilities to de-energize the power lines? 12:23:40

18 A. I don't recall stating that specifically. 12:23:45

19 Q. Okay. I just want to briefly touch on 12:23:49
20 this. I believe you were questioned about whether 12:23:54
21 the utilities seemed to be receptive to the idea of 12:23:57
22 public safety power shutoffs. Is that your 12:24:02
23 recollection? 12:24:04

24 A. Can you provide more context there? 12:24:07

25 Q. Yeah. I was just referring to the 12:24:10

1 questioning before me right now. I believe you had 12:24:13
2 a short back-and-forth about whether the utilities 12:24:17
3 were receptive to the idea of public safety power 12:24:21
4 shutoffs; do you recall being asked that by 12:24:25
5 Mr. Dow? 12:24:29
6 A. Yes. 12:24:32
7 Q. And I guess I'm just trying to understand, 12:24:34
8 because previously you testified, and correct me if 12:24:40
9 I'm wrong, that after your briefing, the utility 12:24:43
10 representatives asked you questions about where is 12:24:46
11 the highest risk, where are fires located. Am I 12:24:50
12 getting your testimony correct? 12:24:55
13 A. Affirmative. 12:24:57
14 Q. Okay. Is it your understanding that those 12:24:58
15 questions demonstrated that the utilities were not 12:25:03
16 receptive to public safety power shutoffs? 12:25:09
17 A. There's a double negative in there. 12:25:16
18 Trying to understand the question. Sorry, could 12:25:18
19 you repeat? 12:25:23
20 Q. Do you have -- we'll get rid of that 12:25:23
21 question. 12:25:26
22 Do you have an understanding of why or, I 12:25:26
23 guess, how did you interpret these questions from 12:25:29
24 the utility representatives? 12:25:31
25 A. I felt like we were missing the point with 12:25:39

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1 the questioning. 12:25:45

2 My highest hope would have been that the 12:25:49

3 conversation got to a place of how we can be -- how 12:25:53

4 we can evaluate information -- evaluate those 12:26:01

5 decisions. I didn't see any sophistication in the 12:26:05

6 thought process by the utilities as to their 12:26:13

7 considerations about when or if they would shut 12:26:19

8 power off to implement a public safety power 12:26:25

9 shutoff. So it lacked sophistication from what I 12:26:29

10 gathered. And quickly went to, well, if you don't 12:26:35

11 know exactly where these fires are starting or 12:26:43

12 where exactly the highest risk how can -- how does 12:26:46

13 that inform my decision whether to make a power 12:26:52

14 shutoff or not. We didn't -- I would have loved 12:26:55

15 the conversation to be more sophisticated in an 12:26:59

16 evaluation of PSPS. 12:27:03

17 Q. Okay. In response to those questions were 12:27:06

18 you able to identify here's the area of highest 12:27:11

19 risk and here's where I'm advising power to be shut 12:27:17

20 off? 12:27:22

21 A. I would have highlighted once again that 12:27:22

22 the river canyons is where we're going to see the 12:27:24

23 greatest wind experience. I would have loved to 12:27:28

24 hear: We're evaluating that, we're tracking that, 12:27:30

25 we're watching that, there's also other areas we're 12:27:34

1 concerned. But we didn't hear that level of 12:27:38
2 sophistication in the conversation. 12:27:45
3 Q. Did any of the utility representatives say 12:27:48
4 to you after your briefing we are -- we're not 12:27:52
5 going to do a public safety power shutoff? 12:27:55
6 A. No. 12:27:58
7 Q. Okay. 12:28:01
8 MS. ZIAO: I think that is, again, all I 12:28:03
9 have. Hope that's the last time. So thank you for 12:28:05
10 your time again and go off camera. 12:28:07
11 MR. GRANT: Mr. Dow? 12:28:10
12 MR. DOW: Doug, I just have one, hopefully 12:28:11
13 just one follow-up here. 12:28:14
14 Not to parse this call too much here, but 12:28:17
15 the message from you and Mr. Blosser to the 12:28:20
16 utilities - this is what's been conveyed earlier, 12:28:23
17 just want to get it clear - look, we can't tell 12:28:28
18 you, can't make you shut off the power but given 12:28:30
19 all these risks we're telling you about, it would 12:28:32
20 be prudent to turn off the power to avoid power 12:28:35
21 line caused ignition in light of these big risks. 12:28:37
22 THE WITNESS: That's a fair assessment on 12:28:43
23 the intent of the call and why the call was 12:28:44
24 initiated. 12:28:49
25 MR. DOW: Is it a fair assessment of what 12:28:50

1 was conveyed to the utilities? 12:28:51

2 THE WITNESS: Yes. 12:28:53

3 MR. DOW: No further questions. 12:28:55

4 MR. GRANT: Anyone else? 12:29:00

5 Stephanie? 12:29:00

6 MS. ZIAO: Sorry. Just going to stay off 12:29:05

7 camera. 12:29:07

8 Just one question. Did you or anyone else 12:29:08

9 on the call tell the utilities: It is prudent to 12:29:12

10 shut off the power at this time? 12:29:17

11 THE WITNESS: I think the balance we're 12:29:21

12 walking around here is the recognition we didn't 12:29:26

13 have that authority and by being direct and firm, I 12:29:28

14 didn't feel like I had the authority clearly to 12:29:37

15 direct the utility so I was careful in my words. 12:29:46

16 So when you ask that question I'm saying I don't 12:29:49

17 recall those exact words coming out but the overall 12:29:52

18 tone and intent of that meeting was clear, to 12:29:56

19 inform decision-makers on shutting off power so 12:30:00

20 they can make prudent decisions and balance that 12:30:07

21 risk proposition that's before us. 12:30:11

22 It was our shot, you know, early in an 12:30:15

23 event to take action. And I feel good that we made 12:30:19

24 an effort at that. Because 72 hours later that 12:30:27

25 opportunity's over, when the wind's done, ignition 12:30:33

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a correct copy of the foregoing **PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS’ SECOND MOTION TO SANCTION** on the following named person(s) on the date and manner indicated below, addressed to said person(s) at the address of each shown below per UTCR 21.100 as follows:

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26 DATED this 7th day of April, 2023.

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