

Whither Bankruptcy - A Phantom Menace or a Possible Reality?

By Ralph Bloemers

I have read claims in testimony and the news media that PacifiCorp's liability for its role in starting fires on Labor Day 2020 may affect its financial viability and risk bankruptcy. While these claims are made, I have not seen any facts or analysis provided that allow us to assess or question the veracity of these claims. Rarely is anyone asking whether it matters, or considering if there are viable alternatives to profit-taking investor-owned utilities in Oregon.

Based on a review of the company's public filings, bankruptcy appears to be far more costly and financially painful than just paying all the survivors who it injured, even many times over, as it would result in a massive debt call for Berkshire Hathaway Energy. Furthermore, many of the claims Pacific Power and others have made regarding its liabilities and obligations appear to be contradicted in these filings.

Relevant to the policy question before the legislature, between 2015 and 2019, PacifiCorp paid Berkshire \$3.050 billion in dividends. See Table 1 attached. As of 2Q, 2024, Berkshire had \$276.9 billion in cash and treasuries. See Below. (How Warren Buffett's Berkshire Hathaway Grew Its Cash Pile as It Sold More Stock ([investopedia.com](https://www.investopedia.com))).

Berkshire Hathaway's Growing Cash Pile

Berkshire Hathaway's cash pile reached a record \$276.9 billion in the second quarter of 2024.

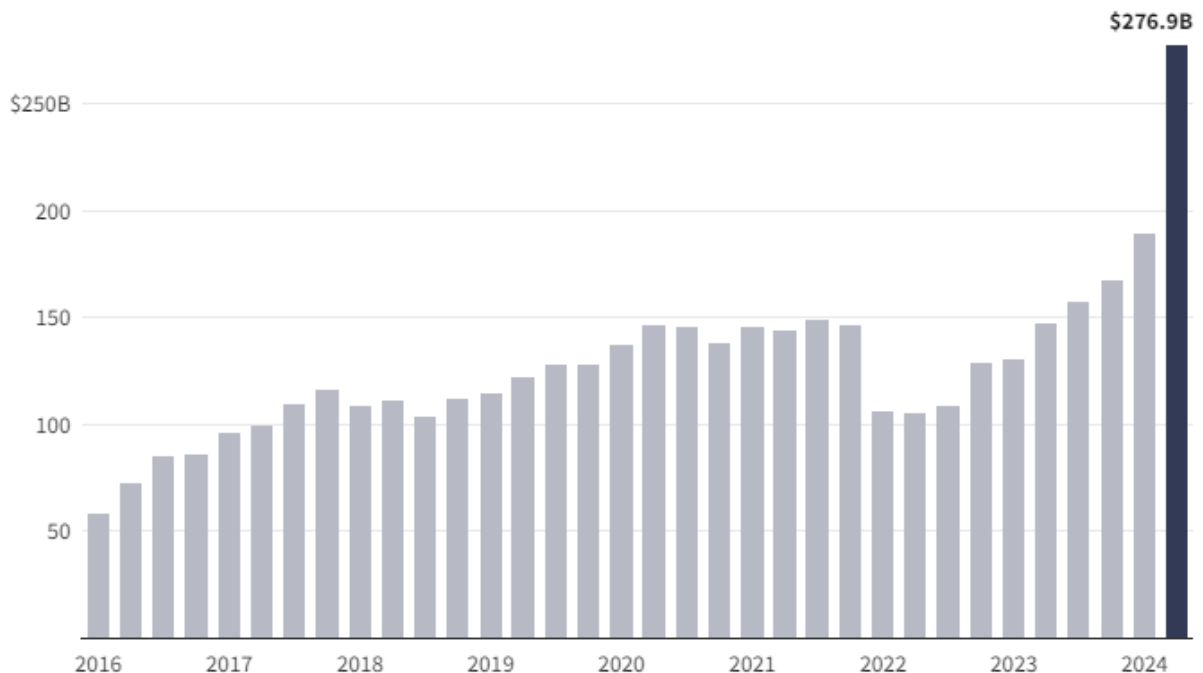


Chart: Investopedia / Kara Greenberg • Source: Company Filings

In an Oregon Tax Court Opinion from 2023 (citation below), the court walks through different valuation methods and concludes, “the court relies entirely on the income approach. The court determines that the real market value of Plaintiff's system was \$17,241,379,310 as of January 1, 2020.” In a motion that PacifiCorp filed on February 21, 2025 to the Court of Appeals (attached), the company asserts: “The damages at issue in the three trials that are the subject of the current judgments are over \$100 million alone. Under Plaintiffs’ theories, the potential damages at issue could reach more than \$6 billion.” But, PacifiCorp tells the financial markets the same day that its “probable losses” associated from all the fire cases, not just from the James case, is \$2.753 billion. So, which of Pacific Power’s numbers is right?

In Berkshire Hathaway Energy’s 10-K for 2024 (released on 2/21/25), Subpart on PacifiCorp’s Fire Liabilities - BHE 12.31.24 Form 10-K, on page 193, the company states: “Estimated Losses for and Settlements Associated with the Wildfires Based on the facts and circumstances available to PacifiCorp as of the date of this filing, including (i) ongoing cause and origin investigations; (ii) ongoing settlement and mediation discussions; (iii) other litigation matters and upcoming legal proceedings; and (iv) the status of the James case, PacifiCorp recorded cumulative estimated probable losses associated with the Wildfires of \$2,753 million through December 31, 2024. PacifiCorp's cumulative accrual includes estimates of probable losses for fire suppression costs, real and personal property damages, natural resource damages and noneconomic damages such as personal injury damages and loss of life damages that it is reasonably able to estimate at this time and which is subject to change as additional relevant information becomes available.”

And on page 226, the company states: PacifiCorp’s shareholder equity is \$10.5 billion, up \$540 million from last year. On pages 76 and 161, the company states:

“Because BHE is a holding company, the claims of its debt holders are structurally subordinated with respect to the assets and earnings of its subsidiaries. Therefore, the rights of its creditors to participate in the assets of any subsidiary in the event of a liquidation or reorganization are subject to the prior claims of the subsidiary's creditors and preferred shareholders, if any. In the event of default due to the bankruptcy, insolvency, or reorganization of a significant subsidiary, **all of BHE's debt will become immediately due**. In addition, pursuant to separate financing agreements, substantially all of PacifiCorp's electric utility properties, MidAmerican Energy's electric utility properties in the state of Iowa, Nevada Power's and Sierra Pacific's properties in the state of Nevada, AltaLink's transmission properties, the equity interest of MidAmerican Funding's subsidiary and substantially all of the assets of the subsidiaries of BHE Renewables that are direct or indirect owners of solar and wind generation projects, are directly or indirectly pledged to secure their financings and, therefore, may be unavailable as potential sources of repayment of BHE's debt.”

Conclusion

While the foregoing is not intended as a comprehensive or complete analysis, it is provided as food for thought and reflection, and as a source of factual information that contradicts many claims we have read or heard. The information also demonstrates the incredible cash pile that Berkshire has amassed in recent decades, the dividends that have been paid by PacifiCorp to Berkshire, the enormous value of the company - and in so doing I submit it underscores the wisdom of the Oregon legislature putting the brakes on further profit taking while Oregonians who have been burned up by PacifiCorp’s conduct continue to suffer.

What was PacifiCorp's historical net income and dividends paid?

Profits & Dividends

PACIFICORP AND SUBSIDIARIES
 CONSOLIDATED STATEMENTS OF OPERATIONS
 (Amounts in millions)

	2015	2016	2017	2018	2019	Total
Operating revenue	\$5,232	\$5,201	\$5,237	\$5,026	\$5,068	\$25,764
Total operating expenses	3,892	3,775	3,775	3,975	3,996	19,413
Operating income	\$1,340	\$1,426	\$1,462	\$1,051	\$1,072	\$6,351
Total other expenses	(317)	(323)	(334)	(308)	(240)	(1,522)
Income tax (benefit) expense	328	340	360	5	61	1,094
Net income	\$695	\$763	\$768	\$738	\$771	\$3,735
Dividends paid	\$950	\$875	\$600	\$450	\$175	\$3,050



Source: Exhibits [215](#) and [216](#). Berkshire Hathaway Energy's [2017 Form 10-K](#).

PACIFICORP AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS (continued)
(Amounts in millions)

	As of December 31,	
	2024	2023
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,462	\$ 1,560
Accrued interest	239	152
Accrued property, income and other taxes	85	65
Accrued employee expenses	96	93
Short-term debt	240	1,604
Current portion of long-term debt	302	591
Regulatory liabilities	92	70
Wildfires liabilities (Note 14)	247	4
Other current liabilities	466	437
Total current liabilities	3,229	4,576
Long-term debt	13,286	9,819
Regulatory liabilities	2,550	2,540
Deferred income taxes	3,222	3,085
Wildfires liabilities (Note 14)	1,289	1,719
Other long-term liabilities	916	899
Total liabilities	24,492	22,638
Commitments and contingencies (Note 14)		
Shareholders' equity:		
Preferred stock	2	2
Common stock - 750 shares authorized, no par value, 357 shares issued and outstanding	—	—
Additional paid-in capital	4,479	4,479
Retained earnings	6,040	5,501
Accumulated other comprehensive loss, net	(9)	(10)
Total shareholders' equity	10,512	9,972
Total liabilities and shareholders' equity	\$ 35,004	\$ 32,610

(10) BHE Debt

Senior Debt

BHE **senior debt** represents unsecured senior obligations of BHE that are redeemable in whole or in part at any time generally with make whole premiums. BHE **senior debt** consists of the following, including fair value adjustments and unamortized premiums, discounts and debt issuance costs, as of December 31 (in millions):

	<u>Par Value</u>	<u>2024</u>	<u>2023</u>
3.50% Senior Notes, due 2025	\$ 400	\$ 400	\$ 399
4.05% Senior Notes, due 2025	1,250	1,250	1,248
3.25% Senior Notes, due 2028	600	597	593
8.48% Senior Notes, due 2028	256	257	264
3.70% Senior Notes, due 2030	1,100	1,097	1,096
1.65% Senior Notes, due 2031	500	498	498
6.125% Senior Bonds, due 2036	1,670	1,663	1,663
5.95% Senior Bonds, due 2037	550	548	548
6.50% Senior Bonds, due 2037	225	223	223
5.15% Senior Notes, due 2043	750	741	741
4.50% Senior Notes, due 2045	750	739	739
3.80% Senior Notes, due 2048	750	738	736
4.45% Senior Notes, due 2049	1,000	991	990
4.25% Senior Notes, due 2050	900	889	889
2.85% Senior Notes, due 2051	1,500	1,489	1,488
4.60% Senior Notes, due 2053	1,000	987	986
Total BHE Senior Debt	<u>\$ 13,201</u>	<u>\$ 13,107</u>	<u>\$ 13,101</u>

Reflected as:

Current liabilities	\$ 1,650	\$ —
Noncurrent liabilities	11,457	13,101
Total BHE Senior Debt	<u>\$ 13,107</u>	<u>\$ 13,101</u>

2023 WL 4571446 (Or.Tax Regular Div.)
Only the Westlaw citation is currently available.

Oregon Tax Court, Regular Division,
Property Tax.

PACIFICORP, Plaintiff,

v.

DEPARTMENT OF REVENUE,
State of Oregon, Defendant.

TC 5411

|

July 17, 2023

D. Conclusion as to Value of Plaintiff's System

Having considered the parties' positions under the cost, income and sales comparison (stock and debt) approaches, the court concludes that neither party has carried the burden of proving the real market value for which it advocates. However, the evidence in total provides ample support for a conclusion of real market value. The court exercises its authority under [ORS 305.412](#), which states:

***39** "When the determination of real market value * * * is an issue before the tax court, the court has jurisdiction to determine the real market value or correct valuation on the basis of the evidence before the court, without regard to the values pleaded by the parties."

As discussed above, in this case the court relies entirely on the income approach. The court determines that the real market value of Plaintiff's system was \$17,241,379,310 as of January 1, 2020.

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JEANYNE JAMES; ROBIN COLBERT;
JANE DREVO; SAM DREVO; BROOKE
EDGE AND BILL EDGE, SR.; LORI
FOWLER; IRIS HAMPTON; JAMES
HOLLAND; RACHELLE
MCMCASTER; KRISTINA MONTOYA;
NORTHWEST RIVER GUIDES, LLC;
SHARIENE STOCKTON AND KEVIN
STOCKTON, VICTOR PALFREYMAN;
PALFREYMAN FAMILY TRUST;
DUANE BRUNN, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED; ALFRED
CUOZZO; DEBORAH JO FAWCETT;
DAVID GILLER, SR.; RICHARD
JENSEN; SCOTT JOINSON; FRANK
KING, INDIVIDUALLY AND IN HIS
CAPACITY AS TRUSTEE OF THE
KING REVOCABLE TRUST; STEPHEN
DAVID NIELSEN; CORY
STANIFORTH; and DEBORAH TANK,

Plaintiffs-Respondents,
Cross-Appellants,

and

MARY KATHLEEN BECHERER, et al.,

Plaintiffs,

and

OREGON DEPARTMENT OF JUSTICE,

Creditor-Respondent,

v.

PACIFICORP, an Oregon corporation;

No. A183140

Multnomah County Circuit
Court No. 20CV33885

**DEFENDANTS-APPELLANTS'
FIRST MOTION FOR
EXTENSION OF TIME TO
FILE OPENING BRIEF**

regarding class certification, evidentiary and instructional errors, statutory interpretation and novel issues of common law. The damages at issue in the three trials that are the subject of the current judgments are over \$100 million alone. Under Plaintiffs' theories, the potential damages at issue could reach more than \$6 *billion*.

This motion is made in good faith and not for purposes of delay. PacifiCorp has been diligently working on the Opening Brief, but requests additional time given the points above, the need to resolve threshold questions regarding the length of the brief, and counsel's trial schedule, as damages trials in this case are continuing.

Accordingly, PacifiCorp respectfully requests that the Court grant this motion for a 28-day extension of time and order that Appellants' Opening Brief be due on March 25, 2025.

DATED: February 21, 2025

STOEL RIVES LLP

s/ Brad S. Daniels

Per A. Ramfjord, OSB No. 934024

per.ramfjord@stoel.com

Brad S. Daniels, OSB No. 025178

brad.daniels@stoel.com

Reilley D. Keating, OSB No. 073762

reilley.keating@stoel.com

Telephone: (503) 224-3380