

WHITE PAPER
Utility Vegetation Liability
Senate Bill 193

Background Information

Legal liability for wildfires caused by vegetation contacting electric lines poses a serious and credible threat to Alaska's electric utilities. Without the reforms in Senate Bill 193, Alaska ratepayers could face higher utility costs from litigation related to damage caused by vegetation outside a utility's control. SB 193 helps ensure that electric utilities' vegetation management plans will be implemented, while providing protection from litigation over situations that utilities cannot reasonably mitigate.

Vegetation wildfire liability risk arises from two primary causes: (1) wildfires caused by vegetation outside a utility easement; and (2) wildfires caused by vegetation growing within the easement. The current statutory and legal regime creates a Catch-22 situation, whereby the electric utilities can be held liable for wildfires caused by vegetation outside utility easements. Electric utilities are prohibited from entering adjacent property without the consent of the property owner but can be subjected to costly litigation if that vegetation causes a wildfire. Even for vegetation located within a utility easement, it is impractical to require electric utilities to eliminate all wildfire hazards. Moreover, wildfire hazards can exist even if the electric utility is following a properly designed vegetation management plan.

Lawsuits brought by property owners and their insurers for damages resulting from wildfires from vegetation contact with power lines have been pursued in the Lower 48. For example, in New Mexico, a diseased tree located 50 feet outside the utility right of way fell during strong winds hitting a power line. Despite the fact the tree was outside the right of way, the utility was held liable for the ensuing fire and was forced to make a large settlement payout to the landowners.

Wildfires tied to vegetation contacting utility lines in 2017 and 2018 caused a major electric utility in California to declare bankruptcy. Then, during the California wildfires in 2019, that same utility was widely criticized for instituting outages to mitigate wildfire risk. The outages, while preventing new wildfires, presented a major inconvenience to consumers and hampered firefighters in their efforts.

Here in Alaska, we are also beginning to see litigation over vegetation contacting electric lines. In 2015, a spruce tree located beyond the boundary of the utility easement fell and struck an electric cooperative's distribution line, resulting in a wildfire. Property owners damaged by the fire filed a lawsuit claiming the electric cooperative was responsible for the fire. The result was that the electric utility was required to engage in the costly defense of a lawsuit for failing to remove a tree that was on land it could not legally access. The case eventually settled.

It is unreasonable for Alaska electric utilities to have to defend against lawsuits for wildfires caused by vegetation from outside their easements and rights of way. Utilities are at the mercy of landowners if utilities want to trim or remove such trees or vegetation. In those cases, electric utilities would be liable for trespass and treble damages if they altered vegetation without a landowner's permission.

Without the reforms in SB 193, electric utilities would be required to look at other options that are prohibitively expensive to consumers or would result in undue damage to the environment and wildlife. Burying electric lines is extremely costly. Alternatively, acquiring easements wide enough to eliminate the possibility of vegetation ever contacting electric lines presents other issues. Such easements would be much wider and would result in significant costs as well as impacts on the environment, wildlife and the property rights of landowners.

The risk for wildfire liability is increasing: more vegetation growth from climate change, longer growing seasons, higher concentrations of CO₂ in the air, and invasive insects (such as spruce bark beetles). These factors increase the likelihood of wildfires and the liability risk to electric utilities. SB 193 is intended to rectify this situation.

For more information, contact:

Crystal Enkvist, Executive Director
Alaska Power Association
907-771-5703
cenkvist@alaskapower.org

Michael Rovito, Deputy Director
Alaska Power Association
907-771-5711
mrovito@alaskapower.org