

# ANCHORAGE DAILY NEWS

Alaska Legislature

## As climate change increases Alaska's wildfire risk, power companies say California-style blackouts could arrive in Alaska

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Homes are destroyed in a neighborhood near mile 91 of the Parks Highway on Wednesday, Sept. 4, 2019. 52 primary residences, three commercial structures and 84 outbuildings were destroyed in the McKinley fire on the night of Aug. 18, according fire officials. (Loren Holmes / ADN)

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JUNEAU — It started with what sounded like an explosion.

By mid-August 2019, Alaska's fire season had already set records. Wildfires were threatening Cooper Landing on the Kenai Peninsula and covering much the state with smoke. Record-low rain fell in the Matanuska-Susitna Borough, and when the wind started gusting on Aug. 17, forecasters were already predicting "extreme" fire risk.

That evening, the gusting winds pushed over a tree that fell onto power lines owned by Matanuska Electric Association, the regional power utility. The energized lines fell to the ground and made explosive contact with the ground, throwing so much electrical power that they turned the ground into glass, according to investigators.

The resulting fire, which became known as the McKinley Fire, spread quickly.

In 24 hours, it destroyed 52 homes, three businesses and 84 other structures. No one was killed, but hundreds of people had to suddenly flee. Approximately 4,300 acres burned, and the state spent almost \$15 million trying to extinguish it.

A year and a half later, state lawmakers are now considering a key question: Who should pay?

### Initial Attack: McKinley Fire Story with Special Information About How to Firewise



In the McKinley Fire, the fallen tree didn't belong to Matanuska Electric Association. It came from a gravel quarry owned by Colaska, a subsidiary of one of the nation's largest construction companies, fire investigators concluded.

Despite that ownership, a collection of insurance companies sued MEA for more than \$2.7 million late last year in an attempt to recoup the cost of fire insurance claims.

Alaska's electric utilities, which are almost all small by national standards, have asked the Alaska Legislature for help. They say that if they can be held liable for wildfires started by trees outside their property, the cost could bankrupt them. They have

proposed legislation that would shield them from most wildfire-related lawsuits.

Without that legislation, they say Alaska utilities could be forced to start California-style rolling blackouts during wildfire conditions. Rather than risk starting a fire, the utilities will simply turn off power lines.

“That is certainly a possibility, as safety is our No. 1 priority,” said Julie Hasquet, a spokeswoman for Chugach Electric.

Even with that strategy, Alaska’s electric utilities — which are almost all cooperatively owned by their customers — could be forced to raise their rates to prepare for lawsuits.

Insurance companies say that if the utilities can’t be held liable for fire damage, fire insurance rates could rise because insurers won’t be able to recoup payouts as easily.

Both sides have a significant number of well-paid lobbyists in Alaska to argue their case, but if those lobbying campaigns stall legislative action, the problem will not go away. Climate change is creating drier, warmer summers in Alaska and increasing the probability of severe storms that can knock trees into power lines.

“The risk of wildfire liability is increasing,” wrote John Burns, president and CEO of Fairbanks-area Golden Valley Electric Association.

### **Risk and rights in the balance**

The highest risk, the utilities say, is on the Kenai Peninsula, in the Interior, and in portions of Southcentral Alaska including Anchorage. In those places, beetles have killed vast swaths of forest, exacerbating problems caused by hotter, drier weather.

Farther north, Golden Valley is dealing with additional problems.

“With the proliferation of growth on trees, and the storms and winds we are getting — I’ll just use Fairbanks as an example. We are having freezing rain now oftentimes in November and December, weather patterns we are not used to,” Burns told a legislative committee this month.

One of the utilities most exposed to fire risk and most vocal about the need for action is Copper Valley Electric Association, which provides power to about 3,800 customers in the eastern Interior, including Glennallen and Valdez.

“Unlike many utilities in the Lower 48, remotely isolated utilities run the risk of having to shut down the power system if a lawsuit were to bankrupt the utility. In most cases, there is not another option for residents or businesses to receive electrical services,” wrote Travis Million, the cooperative’s CEO, in testimony to the Legislature.

Copper Valley has over 500 miles of distribution and transmission lines, some of which wind through beetle-killed forests along the Richardson Highway. Legally, Million said, the co-op can only cut down trees within a certain distance of those lines, in what’s formally known as the “right of way.”

“If you look up at the power poles, and you see four wires on there — typically three on top and one down below that — that’s what we call a three phase. That typically is what we call a 30-foot right-of-way. It’s typically 15 feet from the middle of the pole out either direction,” Million said. “We do have other lines that are single-phase, which is two wires, typically, either side by side or one on top of the other. And some of our single phase is actually narrower. It’s more like a 20-foot right-of-way. So we’d have 10 feet from centerline out.”

The right of way extends “from ground to sky,” so the company can legally lop any branches that grow into that narrow corridor, and most do, spending millions per year to keep those corridors clear. But if a tree is directly outside the right of way, it can’t be cut down without permission from its owner.

Most utilities operate “hazard tree” programs and will cut down a tree for free, but landowners frequently value their trees and don’t always want them cut down.

“And that’s always our problem. For the most part, in any tree-related outage, 90-95% of those are from outside of our right of way that we can’t do anything about. A prime example is Valdez. Our poles are maybe 40-50 feet above ground. And the wires sit down a couple feet from the top. But 15 feet away from that, you’ve got a 100-foot-tall cottonwood tree. I mean, there’s no way you’re going to prevent that from taking your line totally to the ground,” Million said.

He said that his company does have general insurance, but some things can’t be insured against.

“I can tell you that wildfire liability insurance is very difficult to come by. And I can say that on some of our assets, like our transmission line, we can’t even insure our transmission line if we wanted to,” he said.

### **Fires in New Mexico, California and Alaska drive action**

The Alaska Division of Forestry doesn’t publish regular statistics about the number of fires started by downed power lines, but the state’s utilities have been worried about the growing risk since 2011, when a falling power line caused an enormous wildfire in New Mexico.

At the time, the Las Conchas Fire was the largest in that state’s history, and the owner of the power line faced dozens of lawsuits and a \$38 million bill from the U.S. Forest Service. After an extended trial, a jury found the local utility liable for the fire. Many lawsuits were settled out of court for undisclosed amounts.

The Alaska Power Association is the trade group for Alaska’s electric utilities. Its deputy director, Michael Rovito, said the Las Conchas Fire caused utilities to start talking about possible legislation.

“It seems like the fire seasons could be getting longer and worse. And so I think it’s on our members’ minds,” he said.

Three years after Las Conchas, a wildfire broke out near the village of Tyonek, on the west side of Cook Inlet. Firefighters saved the village, but some buildings burned in the resulting Tyonek Fire. State investigators concluded that the fire began when a tree fell on a Chugach Electric power line. Insurance companies sued Chugach Electric, and the resulting case was settled out of court.

In 2019, the state of Alaska also sued Chugach Electric for \$6.4 million, twice the cost of fighting the fire. The state subsequently reduced its claim, and earlier this month settled for \$525,000, an amount mostly paid by the contractor hired by Chugach to trim trees within its right of way.

Company spokeswoman Hasquet said the settlement occurred “without admission of fault or liability,” and that “issues surrounding causation were never resolved or finally determined by the court.”

The year after the Tyonek Fire, 86 people were killed in California by the Camp Fire, which investigators said was started by electrical transmission lines owned and operated by Pacific Gas and Electricity. Facing billions of dollars in lawsuits, PG&E declared bankruptcy. Since then, it and other California electric utilities have begun shutting off power to locations experiencing high wildfire danger.

In the McKinley fire, courts and the state have yet to determine liability. Matanuska Electric Association declined to comment on the lawsuit against it, and the attorney representing the insurance companies also declined to comment.

Jae Won, Colaska’s chief financial officer, said the company wasn’t aware of state fire investigators’ conclusions and declined comment except to point out that the company supported firefighting efforts and was thanked by the Alaska Division of Forestry for its help.

Tim Mowry, a spokesman for the Division of Forestry, said a group at the division determines “cost recovery” — whether the state will try to collect money from someone to cover firefighting costs.

That process hasn’t happened yet with the McKinley Fire, he said.

### **A long legislative process**

The spring after the McKinley Fire, state Sen. John Coghill, R-North Pole, introduced legislation that would grant utilities immunity to liability from wildfires that begin when a tree hits a power line from outside the right of way.

Rovito said that legislation was driven by the New Mexico fire, not the two Alaska fires.

“There wasn’t a specific instance in Alaska that that drove this. I mean, we’ve been working on this bill for a while,” he said.

“This bill is really, to kind of get ahead of something that we’ve seen in the Lower 48, which is electric utilities, becoming liable for kind of things that there are out of their control,” Rovito said.

“We’ve been lucky there hasn’t been much yet,” he said.

Coghill’s bill didn’t pass the Senate in 2020, and he was defeated in that fall’s election, but his legislation has lived on. It’s now being sponsored by Rep. George Rauscher, R-Sutton, and co-sponsored by Rep. Grier Hopkins, D-Fairbanks.

Rauscher’s expansive district includes the Copper Valley Electric service area, and his home was near a small 2016 wildfire that was started by a downed power line.

“If you look, half our timber’s dead,” he said, referring to the amount of beetle-killed trees in his district.

“That made me think we have a problem that’s gonna get bad, and we need to address this,” he said.

Rauscher’s bill has received one hearing in the House Judiciary Committee and is scheduled for another on Monday. He believes it’s primed to move fast and could pass through the House this year.

If Alaska adopts the bill, it would be a pioneer.

“A handful of states are considering or have adopted legislation along these lines, but because each state has distinct local concerns to address, the proposals are not identical to Alaska’s,” said Stephen Bell, a spokesman for the National Rural Electric Cooperative Association.

“The Colorado and Oregon legislatures are currently exploring similar measures. The Utah legislature recently adopted legislation on the right of way liability issue,” he said.

Utah’s law, passed at the urging of small electric companies like those supporting the Alaska bill, was the first of its kind in the nation, but not everyone is pleased with the approach that passed in Utah and is being considered here.

Lyn Elliott is the assistant vice president for state government relations at the American Property Casualty Insurance Association. She said her association, which represents insurance companies across the country, is concerned that insurance companies could lose their ability to “subrogate” — or pursue a third party that caused an insurance loss.

“Insurers do not support limiting or restricting any legal rights to pursue subrogation to recover claim costs, including allowing the courts to determine negligence based on a complete review of the facts. Subrogation is an important tool used by insurers to recoup costs which in turn helps keep insurance premiums affordable,” she said.

### **Adapting to change**

The utilities argue that they should not be held responsible for something they can’t control. The legislation would require them to have a plan for removing trees within their right of way, and as long as they follow that plan, they can’t be held liable.

If the utilities aren’t subject to liability, would adjacent landowners become the target of any lawsuits? It isn’t clear, and the utilities say that’s not their intention.

“This bill is a shield, not a sword,” said John Leman, general counsel for the Alaska Power Association.

Rep. Matt Claman, D-Anchorage, is chairman of the legislative committee hearing Rauscher’s bill and said the issue boils down to “risk.”

“I think that’s kind of the larger question: How do we want to allocate risk in our society?” Claman said.

The electric companies and insurance companies disagree on how that risk should be divided, but both agree that the risk is increasing as climate change, including the spread of spruce beetles, makes wildfires more common. Rauscher said that regardless of the causes of climate change, or whether Alaska's warming climate is due to human causes, the state needs to adjust to change.

“Our environment is constantly changing. We're constantly reacting to the changes our environment subjects us to,” Rauscher said. “And this is one of the things that is going to happen.”

“We must constantly adapt to it,” he said.

#### **About this Author**

#### **James Brooks**

Juneau-based James Brooks covers state government, the Alaska Legislature and general assignments for the Daily News. He previously reported and edited for the Juneau Empire, Kodiak Daily Mirror and Fairbanks Daily News-Miner.

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