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The Honorable Matt Claman &
Members of the House Judiciary Committee
Alaska House of Representatives
Alaska State Capitol Building
Juneau, AK 99811

Dear Chair Claman and Members of the House Judiciary Committee:

Alaska Power Association (APA) strongly supports the original intent of House Bill 29 to clearly define the scope of liability for electric utilities related to vegetation in or near rights-of-ways and incentivize best practices for mitigating the threat of vegetation impacts on electric facilities. I am writing to summarize APA's serious concerns with the changes proposed last Friday by the American Property Casualty Insurance Association (APCIA) and National Association of Mutual Insurance Companies (NAMIC). Those proposed changes would make problems with liability for vegetation contacting utility facilities worse, not better.

The Utah Legislation Is Not a Good Fit for Alaska

The insurance industry has suggested Utah wildfire liability legislation as a better proposal than House Bill 29 and included suggested changes to House Bill 29. We are very concerned with these suggested changes to the bill. The Utah legislation is not a good fit for Alaska, and moreover the insurance industry's suggested changes do not even follow the Utah legislation.

Under the Utah legislation, electric cooperatives do not submit vegetation management plans to the Utah PUC for approval.¹ Electric cooperatives submit their plans to their own governing bodies (i.e., boards of directors) for approval.² The Utah law recognizes that as member/customer-owned businesses, a locally elected cooperative utility board of directors is in the best position to evaluate a vegetation management plan. If the Utah legislation were adopted in Alaska, only a handful of investor-owned utilities would have to submit plans to the Regulatory Commission of Alaska (RCA) for approval. This is a most important distinction.

The insurance industry's suggested amendments to House Bill 29 would require every Alaska electric cooperative, from tiny Unalakleet Valley Electric Cooperative (376 members) to treeless Kotzebue Electric Association, to submit vegetation management plans to the RCA for approval. As mentioned, Alaska's electric utilities that need vegetation management plans already have them. They are accountable to their customer/owners for them because they are locally controlled by those customer/owners.

Requiring submission of vegetation management plans to the RCA would certainly be good for the attorneys and consultants that would participate in the submission and approval process. Ratepayers will

¹ See Utah Code Section 54-23-203, Wildland fire protection plan for an electric cooperative.

² Utah Code Section 54-23-203(3)(a).

have to pay the costs of that process and there is no reason to believe it will result in better vegetation management plans. The RCA does not have any particular knowledge or expertise when it comes to vegetation management. As noted above, an electric cooperative under the Utah legislation would only have to get a vegetation management plan approved by its own boards of directors, not the public utilities commission. Why does the insurance industry think Alaska electric cooperatives need to submit vegetation management plans to the RCA?

The insurance industry suggested amendments to House Bill 29 also do something else the Utah legislation does not: authorize utilities to trespass on private property to remove trees. The Utah legislation does not authorize utilities to trespass and remove trees. Alaskans value their trees and utilities already face issues with unhappy customers when they remove trees they have the legal right to manage in their easements and rights-of-way. Alaska utilities do not want to invade their customers' property to deal with hazardous vegetation without their consent, nor do they want to put their employees in harm's way by asking them to do so.

Alaska utilities commonly ask landowners for permission to remove trees outside the right-of-way: if a utility is clearing vegetation in the right-of-way and sees a hazardous tree, it will often ask permission to trim or remove it. APA and its members worry that authorizing utilities to trespass on their customers' property and remove vegetation would not be welcome by property owners and could cause unintended consequences. For example, if the Legislature authorized utilities to trespass and remove trees without landowner consent, would the state be responsible for a "taking" of private property?

We think it is fundamentally inconsistent with the rights and responsibilities of property ownership to give utilities the right to trespass and remove trees. It also opens the door for a utility to be held liable for failing to remove a tree outside of its right-of-way, which would significantly increase ratepayer liability for vegetation contacting utility facilities. This is the exact opposite of what HB 29 seeks to accomplish. Alaskans are self-reliant and as such recognize that they are responsible for their own property. They will not tolerate utilities, even member-owned utilities, cutting down trees outside of utility rights-of-way.

Finally, both the Utah legislation and the insurance industry proposal are focused solely on fire risks. House Bill 29 is not a wildfire bill. Fire is certainly in the forefront of the issues the bill addresses, but it is not the only risk involved when vegetation contacts utility facilities. For example, if a tree outside the right-of-way hits an electric line, and a snowmachiner hits the downed power line, House Bill 29 makes clear that the utility is not responsible for damages from that accident. Snow and ice loading on vegetation can also be an issue. The suggested amendments from the insurance industry would unnecessarily limit House Bill 29 to wildland fires while ignoring impacts occurring during our long winter months.

House Bill 29 Provides More Clarity and Certainty

House Bill 29 benefits all Alaskans because it brings clarity and certainty to the liability rules for vegetation contacting utility facilities. How can a utility's "negligence" cause a fire when a tree outside its right-of-way falls on an electric line? In the absence of House Bill 29, an insurance company trying to recoup the costs of claims it has paid out can sue a utility to recover payments made to their insureds. It can use the threat of a jury deciding the utility was somehow still negligent to extract a settlement. When utilities have to pay for defending or resolving property damage claims that were caused by factors beyond their control, ratepayers bear that cost.

House Bill 29 protects electric utilities from damages caused by vegetation they do not own or have the legal right to control, whether those claims arise from fires or other forms of damage. While a

reasonable jury should find that a utility is not responsible for such vegetation under a negligence standard, House Bill 29 provides certainty and clarity that they cannot be held liable for such incidents. The insurance industry representatives want to ensure that they can extract money from Alaska utilities, and by extension their ratepayers, with litigation when a tree outside the right-of-way contacts utility facilities. That may benefit Outside insurance companies, but it is not in the best interests of Alaskans. Alaska electric utilities are not backup insurance policies for homeowners.

House Bill 29 also establishes liability standards for vegetation that utilities do have the legal right to control. It ties liability to compliance with a written vegetation management plan. As is explained further below, because of Alaska's special characteristics and the nature of its electric utilities, Alaska utilities have unique incentives to adopt and follow robust vegetation management plans. Alaska's many cooperative electric utilities do what their customer-elected, locally controlled boards and management decide is the best practice to ensure reliability and safety of their facilities. The insurance industry, as indicated in its letter to the committee and suggested amendments, wants to be able to take money out of the pockets of Alaska electric ratepayers through litigation, even when a utility has followed such a vegetation management plan.

Finally, it is worth noting in particular the insurance industry suggested change in Subsection (1)(c). That change says that nothing in House Bill 29 protects a utility for liability under a negligence standard. That change would gut the clarity and protection provided by House Bill 29 by reimposing the existing negligence standard that House Bill 29 is trying to clarify. It is a hidden mechanism to undo any positive impact that House Bill 29 would have by keeping the existing murky negligence standard in place.

Alaska's Electric Utilities Are Almost All Owned and Controlled by Their Customers

Cooperatives are far more common in Alaska than in the Lower 48, providing service all over Alaska. Most Alaska electric utilities are cooperatives, and many that are not are owned by local government. Cooperatives in Alaska are member-owned by their customers, from generation plants all the way down to neighborhood distribution lines. There is a level of customer control and accountability in Alaska utilities that is unique in the United States.

In electric cooperatives, there are no investors or stockholders who can pick up the cost of damage to utility lines. There are no deep pockets: the only pockets to pay those costs belong to utility ratepayers because they are the ultimate owners of the utility. If an Alaska utility loses an electric line, the utility's ratepayers will bear that burden and have to pay to rebuild it. As a result, Alaska utilities already have huge economic incentives to do everything they reasonably can to protect their electric lines from wildland fires and other damage. And they do. Alaska electric utilities manage vegetation to maintain reliable and safe service. They install protective equipment to limit the damage that can be caused when vegetation does contact a line. Aside from tundra environments without vegetation that could threaten utility facilities, Alaska electric utilities have vegetation management plans crafted to meet their unique needs.

Alaska is not just unique with regard to the organization of the electric utilities that provide service. Alaska is not connected to the Lower 48 electric grid and even within the state, most communities outside the Railbelt are not interconnected with each other. Both on the Railbelt and in "islanded" electric grids around the state, Alaska's electric utilities serve disproportionately large areas with sparse population. Add to this the risks of many months of snow and ice in winter and high vegetation growth rates in the summer, with hotter and drier fire seasons, and Alaska utilities face operational challenges unlike any other state.

This unique combination of customer ownership, large service territories with sparse population and economic incentives to keep power lines safe and reliable makes Alaska electric utilities uniquely well-qualified and responsible for planning vegetation management. The Division of Forestry testified that out of 313 fires resulting from vegetation contacting utility facilities from 2011-19, the state only pursued compensation from utility companies for firefighting response costs once. Out of all those fires that involved utility facilities, only once (.3%) did the state believe a utility should be held responsible for State fire suppression costs. That demonstrates that in the State's view, Alaska's electric utilities are already doing everything they reasonably can to protect their facilities from fire risk.

Allowing the insurance industry to benefit from unclear standards of liability may help insurance companies, but it does nothing to help Alaskans. House Bill 29 provides the clarity and certainty Alaska's electric ratepayers need to be protected from potential liability for damages beyond their utility's reasonable control. Even with the additional protection in House Bill 29, the threat of the lights going out and damages to the utility's own property gives them all the incentive they need to follow reasonable vegetation management practices.

We appreciate the continued careful consideration by the committee to House Bill 29 and stand ready to provide any additional information in support of this important legislation.

Sincerely,



Crystal Enkvist
Executive Director