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Chapter 79: The Least-Worst Option for Utility Customers in the Aftermath of Devastating Wildfires

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Chapter 79: The Least-Worst Option for Utility Customers in the Aftermath of Devastating Wildfires

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Code Sections Affected

Public Utilities Code §§ 326.1, 326.2, 451.3, 1701.8, 3280, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3291, 3292, 3293, 3294, 3295, 3296, 3297, 8386.3, 8386.4, 8389 (new), §§ 311, 451.1, 850, 850.1, 854, 854.2, 1701.1, 1701.3, 8386, 8387 (amended); Water Code §§ 80500, 80502, 80503, 80504, 80506, 80508, 80510, 80520, 80522, 80524, 80526, 80528, 80540, 80542, 80544, 80550 (new).

AB 1054 (Holden); 2019 STAT. CH. 79.

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I. INTRODUCTION

November 8, 2018, started as any other morning would in the small Northern California town of Paradise.[1] However, in the early morning, a live wire broke free of its grip causing a single customer power failure.[2] A fire then broke out near the broken wire.[3] Rich Ellison, a resident of Paradise during the fire, explained how people "got out with the clothes on their back and their prescription meds and their slippers."[4] He further described the panic: "There were people trapped in their cars that died and people that got out and ran because it was a gridlock."[5] Fire engulfed the entire town within hours and eventually killed eighty-five people, causing nearly seven billion dollars in damage.[6]

California experienced some of its deadliest wildfires ever in 2017 and 2018.[7] While Governor Newsom and the Legislature focus on the recovery of companies like Pacific Gas & Electric ("PG&E"), the people of Paradise remain in flux.[8] "They feel like they don't have a voice and there's no one watching out for them."[9] For the people of Paradise, recovery means rebuilding and moving forward in any way possible.[10]

Chapter 79 is the most recent legislative response to wildfire-caused destruction.[11] The law aims to protect Californians by establishing tougher and more extensive guidelines for the electrical companies associated with these

1. Ivan Penn, Peter Eavis & James Glanz, *How PG&E Ignored Fire Risks in Favor of Profits*, N.Y. TIMES (Mar. 18, 2019), https://www.nytimes.com/interactive/2019/03/18/business/pge-california-wildfires.html (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. Telephone Interview with Rich Ellison, a Paradise resident (June 24, 2019) (notes on file with *The University of the Pacific Law Review*).

5. *Id.*

6. Penn, Eavis & Glanz, *supra* note 1; Andrew Sheeler, *These Three 2018 California Wildfires Caused More Than $9 Billion in Damage*, THE SACRAMENTO BEE (Dec. 12, 2018), https://www.sacbee.com/news/politics-government/capitol-alert/article222997430.html (on file with *The University of the Pacific Law Review*).

7. Sheeler, *supra* note 6.

8. Taryn Luna, *To Reduce Wildfires and Save Utilities, Newsom Wants $10.5 billion From Ratepayers*, L.A. TIMES (June 21, 2019), https://www.latimes.com/politics/la-pol-ca-gavin-newsom-wildfire-utility-fund-20190621-story.html (on file with *The University of the Pacific Law Review*); Telephone Interview with Rich Ellison, *supra* note 4.

9. Telephone Interview with Rich Ellison, *supra* note 4.

10. *Id.*

11. CAL. CIV. CODE § 311-8387 (amended by Chapter 79) (establishing greater regulatory framework to protect ratepayers and force investor-owned utilities to enact greater safety precautions in order to access help from the government to pay off wildfire liabilities).

fires.[12] It is part of a statewide, multi–year effort to combat the wildfires' devastating impacts and to protect the state's electrical infrastructure.[13] This law is a crucial step forward, yet it pushes pause by providing utilities a quick financial fix in exchange for future promises of reform.[14] Placing a band-aid on the problem can only go so far.[15] Chapter 79 sounds great in theory but Californians need real solutions now, and not theoretical ones in the future.[16] Real solutions for Californians would take a look at the cause of wildfires in order to prevent them from happening in the first place.[17]

II. LEGAL BACKGROUND

Former Governor Jerry Brown commented that although "Californians depend on reliable electrical power . . . costly wildfires . . . undermine this system, leaving our energy sector in a state of weakness at a time when it should be making even greater investments in safety."[18] California has a long history of regulatory reform to protect and enhance this vital system.[19] Section A explores the regulatory agencies in charge of the energy markets.[20] Section B explains the basis for liability for investor-owned utilities.[21] Section C looks into previous wildfire-related litigation and how it impacted Chapter 79.[22]

A. Energy Regulatory Agencies

The Federal Energy Regulatory Commission ("FERC") is an independent federal regulatory agency in charge of regulating utility corporations.[23] The FERC oversees interstate transmission and the wholesale sale of energy in the electric, gas, and oil industries.[24] It also monitors the interstate energy systems and oversees larger environmental concerns related to the natural gas and

12. CAL. CIV. CODE § 311-8387 (amended by Chapter 79).

13. GOVERNOR NEWSOM, CATASTROPHIC WILDFIRES, CLIMATE CHANGES AND OUR ENERGY FUTURE, 2 (2019).

14. CAL. CIV. CODE § 311-8387 (amended by Chapter 79).

15. CAL. CIV. CODE § 311-8387 (amended by Chapter 79); *see infra* Part IV.

16. CAL. CIV. CODE § 311-8387 (amended by Chapter 79); *see infra* Part IV.

17. CAL. CIV. CODE § 311-8387 (amended by Chapter 79); *see infra* Part IV.

18. Letter from Edmund G. Brown Jr., Governor of California, to Bill Dodd, Co-Chair of the Conference Committee on Wildfire Preparedness and Response, and Chis Holden, Co-Chair of the Conference Committee on Wildfire Preparedness and Response (July 24, 2018) (on file with *The University of the Pacific Law Review*).

19. *Hearing on AB 1054 Before the S. Comm. on Approp.*, 2019 Leg., 2019–2020 Sess., 4 (Cal. 2019) (on file with *The University of the Pacific Law Review*).

20. *See infra* Part II.A.

21. *See infra* Part II.B.

22. *See infra* Part II.C.

23. *What FERC Does*, FEDERAL ENERGY REGULATORY COMM'N (last updated Aug. 14, 2018), https://www.ferc.gov/about/ferc-does.asp (on file with *The University of the Pacific Law Review*).

24. *Id.*

electricity industry.[25]

At the state level, public utility commissions regulate utility operations.[26] The California Public Utilities Commission ("CPUC") regulates California investor-owned electric and natural gas utilities operating within the state.[27] It sets the prices and revenue standards for electrical utility companies.[28]

The CPUC's main function is to determine the amount each utility can collect from its customers.[29] The charge includes the utility's revenue requirement, maintenance and operating costs, and power procurement.[30] If an electrical utility intends to increase its rates, the CPUC decides whether the electrical utility can do so.[31]

B. Liability for Investor-Owned Utilities

Inverse condemnation is a legal doctrine that holds investor-owned utility companies liable for the damage their equipment causes.[32] This legal concept entitles property owners to compensation if their property sustains damage in the course of public use.[33] Inverse condemnation is one avenue for utilities to pay damages to victims because of their equipment.[34]

Inverse condemnation usually applies exclusively to government agencies that damage private property while providing public services.[35] The doctrine is common, but the way California applies it is not.[36] California grants investor-owned utility companies the power to condemn private property using eminent domain to construct infrastructure and operate their businesses.[37] While investor-owned electrical corporations are private corporations, they act as public entities

25. *Id.*

26. *Utility Regulation and Policy*, AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY, https://aceee.org/topics/utility-regulation-and-policy (on file with *The University of the Pacific Law Review*).

27. *Electric Costs*, CALIFORNIA PUBLIC UTILITIES COMM'N (last updated 2019), https://www.cpuc.ca.gov/Costs_Rates/ (on file with *The University of the Pacific Law Review*).

28. *Hearing on AB 1054 Before the S. Comm. on Approp.*, *supra* note 19, at 4.

29. *Electric Costs*, *supra* note 27.

30. *Id.*

31. *Id.*

32. *Inverse Condemnation Fact Sheet*, LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASS'N OF COUNTIES (last accessed Oct. 13, 2019), https://www.counties.org/sites/main/files/file-attachments/inverse_condemnation_fact_sheet_league__csac.pdf (on file with *The University of the Pacific Law Review*).

33. *Id.*

34. *Id.*

35. David R. Baker, *The California Rule That Doomed PG&E: Inverse Condemnation*, BLOOMBERG (Jan. 15, 2019, 4:45 PM), https://www.bloomberg.com/news/articles/2019-01-15/the-california-rule-that-doomed-pg-e-inverse-condemnation (on file with *The University of the Pacific Law Review*).

36. *Id.*

37. *Inverse Condemnation and Utility Liability*, CALIFORNIA STATE ASS'N OF COUNTIES (last accessed Oct. 13, 2019), http://www.counties.org/sites/main/files/file-attachments/csac_issue_brief_inverse_condemnation_7-25-18.pdf (on file with *The University of the Pacific Law Review*).

due to the nature of their services.[38] Therefore, investor-owned electrical utilities in California are strictly liable when the utility's infrastructure causes the ignition and the resulting damage.[39]

Caselaw in California established liability for investor-owned utility companies under inverse condemnation.[40] In *Holtz v. Superior Court*, the court explained the reasoning for socializing these costs.[41] The costs associated with activities that generate public benefits should be "distribute[d] throughout the community . . . to socialize the burden . . . that should be assumed by society."[42] Investor-owned utilities can socialize these costs through raising rates and spreading costs on customers who benefit from the service.[43] Because of this doctrine, victims can recover their damages from these electrical corporations in exchange for a dominant presence in California.[44]

C. Previous Wildfire Legislation

Chapter 79 is not the first law that California enacted to further regulate electrical utilities.[45] The 2001–2002 legislative session adopted AB 57 following the 2000–2001 energy crisis.[46] AB 57 provided guidance to electrical corporations by requiring the CPUC review procurement plans of electrical corporations.[47] It came about to restore investor confidence after the energy crisis.[48] The procurement plans provided reliable and achievable standards to

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38. *Id.*

39. CAROLYN KOUSKY, KATHERINE GREIG & BRETT LINGLE, FINANCING THIRD PARTY WILDFIRE DAMAGES: OPTIONS FOR CALIFORNIA'S ELECTRIC UTILITIES, WHARTON RISK MGMT. & DECISION PROCESS CTR. (2019).

40. *See* Gay Law Students Ass'n v. Pac. Telephone & Telegraph Co., 24 Cal. 3d 458, 599 (1979) (finding that investor-owned utilities are more like government entities than private employers based on regulation by the CPUC); *see also* Barham v. Southern California Edison Co., 88 Cal. Rptr. 2d 424 (App. Div. 1999) (finding that investor-owned utilities are liable for damages caused from wildfires started by their equipment under the doctrine of inverse condemnation because of the utility's ability to condemn property through eminent domain).

41. *See* Holtz v. Superior Court, 3 Cal. 3d. 296, 303 (1970) (finding that plaintiffs should receive compensation under Article I, Section 14 of the California Constitution for "any actual physical injury to real property proximately caused by the improvement as deliberately designed and constructed" in accordance with the principles of inverse condemnation).

42. Holtz, 3 Cal. 3d at 303.

43. KOUSKY, GREIG & LINGLE, *supra* note 39.

44. *Id.*

45. Southern California Edison Company, Comments on Order Instituting Rulemaking to Implement Public Utilities Code Section 451.2 Regarding Criteria and Methodology for Wildfire Cost Recovery Pursuant to Senate Bill 901, at 3 (Feb. 11, 2019), http://www3.sce.com/sscc/law/dis/dbattach5e.nsf/0/43A6A8DBE6435F278825839F0002C51A/$FILE/R1901006-SCE%20Opening%20Comments%20on%20OIR.pdf (on file with *The University of the Pacific Law Review*).

46. *Id*. at 11, 12.

47. *Id.*

48. *Id.*

ensure stabilization in the state's energy market to restore investors' confidence.[49]

After the devastating 2017 and 2018 wildfires, the Legislature passed SB 901.[50] Discussing the importance of the bill, then-Governor Brown explained, "[w]ildfires in California aren't going away, and we have to do everything possible to prevent them."[51] Lawmakers hoped this bill would "prevent catastrophic wildfires and protect Californians."[52] Senator Bill Dodd called it "a comprehensive approach" to protect both victims of the devastation and utility ratepayers.[53]

SB 901 requires that electric corporations provide and "submit wildfire mitigation plans" to the CPUC.[54] The plans should be comprehensive and combine metrics from past fires as well as current guidelines from the CPUC.[55] Once the CPUC approves the plan, the electrical corporation must comply with its plan, objectives, and the CPUC's timeline for such goals.[56]

SB 901 drastically changed the post–wildfire cost allocation process.[57] The CPUC now considers the financial status of a corporation in order to avoid harming ratepayers or impacting its service when determining the maximum amount it should pay.[58] The law created a "stress-test": how far can the CPUC push an electrical corporation without risking service interpretations or negatively impacting ratepayers.[59]

Both SB 901 and AB 57 had a common theme: preparedness and thoughtfulness benefit all parties and create a more stable and reliable service provider.[60] SB 901 specifically paved the avenue for further legislative action to

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49. *Id.*

50. *Hearing on AB 1054 Before the S. Comm. on Approp.*, *supra* note 19, at 11.

51. Alexei Koseff, *Your Utility Bill Could Reflect Fire Costs Under New California Law*, THE SACRAMENTO BEE (Sept. 21, 2018, 11:59 AM), https://www.sacbee.com/news/politics-government/capitol-alert/article218803990.html (on file with *The University of the Pacific Law Review*).

52. Judy Lin & Laurel Rosenhall, *Jerry Brown Signed $1 billion in Wildfire Prevention-and None of it Applies to the Fires This Year*, CALMATTERS (Nov. 14, 2018), https://calmatters.org/articles/california-wildfire-prevention-bill-issues/ (on file with *The University of the Pacific Law Review*).

53. Ben Adler, *What The Heck is in California's Wildfire Liability Law that Lawmakers are Voting On Friday Night?*, CAPITAL PUBLIC RADIO (Aug. 31, 2018), http://www.capradio.org/articles/2018/08/31/what-the-heck-is-in-californias-wildfire-liability-rule-that-lawmakers-are-voting-on-friday-night/ (on file with *The University of the Pacific Law Review*).

54. Southern California Edison Company, *supra* note 45, at 13.

55. *Id.*

56. Southern California Edison Company, *supra* note 45, at 13; *Utility Wildfire Mitigation Plans (SB 901)*, CALIFORNIA PUBLIC UTILITIES COMM'N (May 30, 2019), https://www.cpuc.ca.gov/sb901/ (on file with *The University of the Pacific Law Review*).

57. *SB 901 – Conference Committee Report Bill Summary*, CALIFORNIA STATE ASS'N OF COUNTIES (Aug. 29, 2019), https://www.counties.org/sites/main/files/file-attachments/sb_901_bill_summary_csac_8-31-18.pdf (on file with *The University of the Pacific Law Review*).

58. *Id.*

59. *Id.*

60. Southern California Edison Company, *supra* note 45, at 13.

create a more comprehensive framework to protect such a vital industry.[61]

III. CHAPTER 79

Chapter 79 aims to mitigate the economic impact that catastrophic wildfires have on both California residents and society as a whole.[62] It accomplishes this by implementing strict safety procedures to help the impacted electrical utility companies recover from the debilitating recovery costs.[63] Chapter 79 follows SB 901's path and takes greater steps to establish a more regimented process for cost recovery and future safety implementation.[64] Assembly Member Chris Holden described how Chapter 79 "will pave the way for very important changes in how we address wildfires in California."[65] The law "provides certainty for the markets to protect the utilities and provides certainty for fire victims."[66]

Chapter 79's goal is to establish a regulatory foundation that would shield electrical utilities from potentially crippling liabilities without harming ratepayers.[67] Chapter 79 gives utilities strict requirements to avoid burdening customers with resolving cost issues and implementing future safety enhancements.[68]

The crux of Chapter 79 is a wildfire fund, which will provide faster recovery to victims by paying eligible claims arising from a covered wildfire.[69] The wildfire fund's main idea is to reduce ratepayer costs while still providing the necessary capital for electrical corporations to pay of liabilities.[70] The fund supports the credit worthiness of the corporations by attracting capital for investment in safe and reliable power.[71]

To access the fund, an electrical corporation must earn an annual safety certification from the CPUC before the approaching wildfire season.[72] A corporation must tie executive compensation to its safety performance.[73] This

61. *SB 901 – Conference Committee Report Bill Summary*, *supra* note 57.

62. CAL. CIV. CODE § 311–8387 (amended by Chapter 79).

63. *Id.*

64. *Id.*

65. Taryn Luna, *Utility Customers Will Pay $10.5 billion for California Wildfire Costs Under Bill Sent to Newsom*, L.A. TIMES (July 11, 2019), https://www.latimes.com/politics/la-pol-ca-wildfire-fund-gavin-newsom-20190711-story.html (on file with *The University of the Pacific Law Review*).

66. *Id.*

67. J.D. Morris, *California lawmakers move to implement Newsom's utility wildfire plan*, S.F. CHRONICLE (June 28, 2019), https://www.sfchronicle.com/business/article/California-lawmakers-propose-legislation-to-14058832.php (on file with *The University of the Pacific Law Review*).

68. *Id.*

69. *Hearing on AB 1054 Before the S. Comm. on Approp.*, *supra* note 19, at 8.

70. *Id.* at 2.

71. *Id.* at 2, 12.

72. *Hearing on AB 1054 Before the Assemb. Comm. on Util. and Energy*, 2019 Leg., 2019–2020 Sess., 5, (Cal. 2019) (on file with *The University of the Pacific Law Review*).

73. *Id.*

safety certification could include enacting safety committees on its boards of directors to help a company's ability to implement a wildfire mitigation plan.[74] Further, a corporation must invest $5 billion into safety plans and cannot profit from this investment.[75] Under previous law, state regulators would grant a return on the investment.[76]

Initially the state's Surplus Money Investment Fund will provide money for the wildfire fund through a loan.[77] After this initial funding, electrical corporations themselves will contribute to the fund annually through a combination of ratepayer contribution and shareholder investment.[78] The law supplements funding with $10.5 billion in ratepayer expenses through a mandatory $2.50 additional monthly charge.[79]

An electrical corporation must make an initial investment-which varies with the size of the corporation-on top of its annual contribution to access the fund.[80] After a large electrical corporation makes an initial contribution of $7.5 billion, it then makes annual contributions of $300 million.[81] A regional electrical corporation makes an initial contribution of $625 multiplied by the number of accounts it services, the company then makes annual contributions of $25 measured by the same metric.[82] The courts must approve PG&E's participation.[83] In order to participate, the company must exit its bankruptcy process by June 30, 2020 without raising rates to customers.[84]

Chapter 79 requires the CPUC to determine whether an electrical corporation's ignition-related conduct should allow cost recovery for wildfire

74. *Id.*

75. The Times Editorial Board, *California is Inexplicably Racing to Pass a Badly Vetted Wildfire Bill*, L.A. TIMES (July 10, 2019, 3:10 AM), https://www.latimes.com/opinion/editorials/la-ed-wildfire-fund-rush-20190710-story.html (on file with *The University of the Pacific Law Review*).

76. *Hearing on AB 1054 Before the S. Comm. on Approp.*, *supra* note 19, at 1.

77. CAL. CIV. CODE § 311–8387 (amended by Chapter 79); *see generally State of California Manual of State Funds*, DEP'T OF FINANCE (revised Aug. 2012), http://dof.ca.gov/budget/Manual_State_Funds/Find_a_Fund/documents/0681.pdf (on file with *The University of the Pacific Law Review*) (explaining that the Surplus Money Investment Fund is "[m]oneys of various funds on deposit in the State Treasury are transferred for investment purposes").

78. CAL. CIV. CODE § 311–8387 (amended by Chapter 79).

79. Luna, *supra* note 65; *see generally* Bryan Anderson, *Will Utility Rates Go Up? What California's $26 Billion Wildfire Plan Means for You*, THE SACRAMENTO BEE (July 12, 2019), https://www.sacbee.com/news/politics-government/capitol-alert/article232603792.html (on file with *The University of the Pacific Law Review*) ("When California experienced an energy crisis in 2001, the state imposed a $2.50-a-month charge on customers of investor-owned utilities. That fee was set to expire next year. But under the new law Newsom signed, it will be extended another 15 years").

80. CAL. CIV. CODE § 311–8387 (amended by Chapter 79).

81. *See id.* ("'Large electrical corporation' means an electrical corporation with 250,000 or more customer accounts within the state").

82. *See id.* ("'Regional electrical corporation' means an electrical corporation with less than 250,000 customer accounts within the state'").

83. CATASTROPHIC WILDFIRES, CLIMATE CHANGES AND OUR ENERGY FUTURE, *supra* note 13, at 9.

84. Luna, *supra* note 65.

damage liabilities.[85] Ultimately, reasonable conduct predicates cost recovery for electrical corporations.[86] The conduct was reasonable if it was consistent with actions a reasonable utility would undertake in good faith in the same or similar circumstances.[87] An electrical corporation must show by a preponderance of the evidence that its conduct was reasonable in order to recover costs.[88] The corporation automatically satisfies the reasonableness requirement if it had a valid safety certification during the wildfire.[89]

A party to the action can rebut the presumption of reasonable conduct by creating a serious doubt as to the reasonableness of a corporation's actions.[90] The burden then shifts back to the corporation to ultimately prove its conduct was reasonable.[91] If a corporation did behave unreasonably, then it would have to reimburse the fund through a predetermined amount based on its operating size.[92] Chapter 79 changes the standards of evaluating electrical utility to encourage better fire mitigation practices while simultaneously providing the necessary capital these companies need to move forward.[93]

IV. ANALYSIS

Governor Newsom noted in his Strike Force report on California's wildfire status that "[w]ildfires are not only more frequent but far more devastating."[94] Without action to address this changing status quo, the state faces another energy crisis.[95] However, Chapter 79 simply buys the Legislature time to come up with more sustainable, long-term solutions to combat deadly wildfires.[96] Section A looks into the causes of wildfires.[97] Section B analyzes the costs associated with utility-ignited wildfires.[98] Section C explores future practices utility companies

85. *Hearing on AB 1054 Before the Assemb. Comm. on Util. and Energy*, *supra* note 72, at 1.

86. *Id.* at 1–2.

87. *Id.*

88. *Id.* at 2.

89. *Hearing on AB 1054 Before the S. Comm. on Approp.*, *supra* note 19, at 12.

90. *Id.*

91. *Id.*

92. *Hearing on AB 1054 Before the S. Comm. on Approp.*, *supra* note 19, at 12; *see* Luna, *supra* note 65 (explaining how the law limits a company's risk exposure through a 20% cap on payment).

93. CAL. CIV. CODE § 311–8387 (amended by Chapter 79); Luna, *supra* note 65.

94. Wildfires and Climate Change: California's Energy Future, Governor Newsom's Strike Force (Apr. 12, 2019), https://www.gov.ca.gov/wp-content/uploads/2019/04/Wildfires-and-Climate-Change-California%E2%80%99s-Energy-Future.pdf (on file with *The University of the Pacific Law Review*).

95. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *Final Report of the Commission on Catastrophic Wildfire Cost and Recovery* (2019), *available at* http://opr.ca.gov/docs/20190618-Commission_on_Catastrophic_Wildfire_Report_FINAL_for_transmittal.pdf (on file with *The University of the Pacific Law Review*).

96. *Id.*

97. *See infra* Part IV.A.

98. *See infra* Part IV.B.

can take to mitigate wildfire risk.[99]

A. What Causes Wildfires?

On average, more than 70,000 wildfires burn about 7,000,000 acres of land in the United States each year.[100] In 2019 alone 1,349 wildfires burned around 12,000 acres of land in the Golden State.[101] Multiple factors contribute to the unusual amount of fires California sees.[102] Forest mismanagement is one of the factors, as California does not clear enough of the brush that builds up year after year.[103] Tough winter weather knocks down trees, leading to brush overgrowth that dries out over summer and becomes excellent kindling.[104] "Wind, humidity, and vegetation" primarily drive fire behavior.[105]

Although environmental factors set the stage, humans cause a majority of California's wildfires-from "an arsonist lighting up a hillside" to a truck releasing a spark.[106] Utility-ignited wildfires do not account for all human-ignited wildfires, but electrical infrastructure plays a vital role in California's wildfire threat.[107] While electrical power only sparks about 9.4% of wildfires, this is something utility companies could avoid altogether.[108] In three and a half years, equipment of California's three largest utilities ignited more than 2,000 wildfires within the state.[109] Additionally, PG&E admitted that one of its transmission lines

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99. *See infra* Part IV.C.

100. Claire Wolters, *Climate 101: Wildfire*, NAT'L GEOGRAPHIC https://www.nationalgeographic.com/environment/natural-disasters/wildfires/ (on file with *The University of the Pacific Law Review*).

101. Jasmine Aguilera, *During Record-Breaking Heat Wave, California Sees Nearly 240 Wildfires Within a Week*, TIME (June 13, 2019), https://time.com/5604644/california-wildfires-heat-wave/ (on file with *The University of the Pacific Law Review*).

102. *See* Kendra Pierre-Louis, *Why Does California Have So Many Wildfires?*, N.Y. TIMES (Nov. 9, 2018), https://www.nytimes.com/2018/11/09/climate/why-california-fires.html (on file with *The University of the Pacific Law Review*) (listing the multiple factors that contribute to the wildfires, including California's climate, human acts, fire suppression actions that make modern fires worse, and the Santa Ana winds).

103. Matt Simon, *Blame Utilities for Wildfires, but Blame Everyone Else Too*, WIRED (June 14, 2019, 7:00 AM), https://www.wired.com/story/utilities-wildfires/ (on file with *The University of the Pacific Law Review*).

104. Kimberly Veklerov, *What Causes wildfires?*, S.F. CHRONICLE (May 31, 2019), https://www.sfchronicle.com/bayarea/article/How-California-s-biggest-wildfires-ignited-13907244.php (on file with *The University of the Pacific Law Review*).

105. *Id.*

106. *Id.*

107. Taryn Luna, *California Utility Equipment Sparked More Than 2,000 Fires in Over Three Years*, L.A. TIMES (Jan. 28, 2019), https://www.latimes.com/politics/la-pol-ca-california-utilities-wildfires-regulators-20190128-story.html (on file with *The University of the Pacific Law Review*); *see generally* Doyle Rice, *How Do Wildfires Start? All It Takes Is a Spark*, USA TODAY (Nov. 13, 2018), https://www.usatoday.com/story/news/nation/2018/11/13/california-fires-how-do-wildfires-start-they-getting-worse/1987691002/ (on file with *The University of the Pacific Law Review*) (explaining the perfect conditions for wildfire risk that include hot, dry summers with below average precipitation).

108. Veklerov, *supra* note 104.

109. Luna, *supra* note 107.

sparked the Camp Fire.[110] These same lines were incredibly old, further increasing the wildfire risk.[111] Old electrical infrastructure in these areas plays a major role in sparking these fires.[112]

A recent report showed that PG&E delayed work on its lines that were in the worst shape to focus on other problems-despite knowing the risk.[113] Specifically, the company knew the Caribou-Palermo line, which caused the Camp Fire, needed work-but the company delayed safety inspections for more than five years.[114] Despite age and structural integrity concerns, PG&E never performed any maintenance.[115] This lack of action came to fruition in Paradise.[116]

Wind and heat aside, the real cause of California's worst electrical utility-ignited wildfires is a lack of oversight.[117] In 2010, PG&E hired Quanta Technology to assess the age and condition of its transmission structures.[118] While the firm found 90% of the towers were over 60 years old and the company should do routine checks on them, PG&E did nothing.[119] PG&E showed that California cannot rely on electrical utility companies to stop wildfires on their own without government intervention.[120]

Just because something is old does not mean it needs fixing.[121] However, it does mean that it needs surveillance and routine maintenance.[122] Chapter 79 attempts to solve this by allowing cost recovery through reasonable actions, which would certainly include maintenance and inspections.[123] Yet, Chapter 79 offers nothing more than a promise to Californians that electrical utilities will change.[124] Lawmakers can only hope corporations buy-in and adhere to the provisions laid out in Chapter 79 until California creates more serious plans moving forward.[125] In the meantime, Californians will be holding their breath as

110. Kurtis Alexander, Peter Fimrite & J.D. Morris, *PG&E Caused Camp Fire, Cal Fire says*, S.F. CHRONICLE (May 15, 2019), https://www.sfchronicle.com/business/article/PG-E-power-lines-have-long-been-the-leading-13848463.php (on file with *The University of the Pacific Law Review*).

111. Katherine Blunt & Russell Gold, *PG&E Knew for Years Its Lines Could Spark Wildfires, and Didn't Fix Them*, THE WALL ST. J. (July 10, 2019, 10:28 AM), https://www.wsj.com/articles/pg-e-knew-for-years-its-lines-could-spark-wildfires-and-didnt-fix-them-11562768885 (on file with *The University of the Pacific Law Review*).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Telephone Interview with Brandon Ebeck, Legislative Director, Office of Assembly Member Chad Mayes (July 12, 2019) (notes on file with *The University of the Pacific Law Review*).

122. Blunt & Gold, *supra* note 111.

123. Luna, *supra* note 8.

124. The Times Editorial Board, *supra* note 75.

125. Luna, *supra* note 8.

the state enters another fire season.[126]

B. Who Actually Pays for Wildfires?

In addition to the physical destruction and emotional toll, wildfires carry overwhelming financial costs.[127] The government, citizens, firefighters, and local business owners all bear these costs.[128] Chapter 79 poses as a consumer protection law, even though it focuses on electrical utilities' costs after a fire.[129] It promises future reform in exchange for money now.[130] Money, however, can only come from so many places.[131] While Chapter 79 promises that market stability now will increase investment and reduce costs for ratepayers, there is no guarantee this plan will work.[132]

Chapter 79 originated from the fear that Wall Street would turn its back on the electrical utility companies after massive liabilities bankrupted them.[133] Many ratings agencies threatened to downgrade the companies' credit ratings to junk bond status if the Legislature did nothing.[134] Lower credit rating means less investment, which in turn means ratepayers alone front the utilities' operating and maintenance costs.[135]

Chapter 79 is a band-aid that provides necessary capital right now to prevent against a potential future collapse.[136] The new law keeps utility companies solvent to keep Californians' lights on.[137] Protecting ratepayers and the electrical

126. Telephone Interview with Rich Ellison, *supra* note 4.

127. *See* DOUGLAS THOMAS ET AL., NAT'L INST. OF STANDARDS & TECH., THE COSTS AND LOSSES OF WILDFIRES: A LITERATURE SURVEY (2017), *available at* https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1215.pdf (on file with *The University of the Pacific Law Review*) (estimating that "[t]he total of annualized costs and losses of wildfire . . . is between $71.1 and $347.8 billion.").

128. *Id.*

129. The Times Editorial Board, *supra* note 75.

130. *Id.*

131. Luna, *supra* note 65.

132. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 1054, at 4 (July 11, 2019).

133. Peter Eavis & Ivan Penn, *California Utility Customers May Be on Hook for Billions in Wildfire Damage*, N.Y. TIMES (Nov. 14, 2018), https://www.nytimes.com/2018/11/14/business/energy-environment/california-fire-utilities.html (on file with *The University of the Pacific Law Review*).

134. *See* GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95 (describing the impact of the wildfires on Sacramento Municipal Utilities District (SMUD): "Recently ratings agencies have started reassessing POU's financial risk to wildfire catastrophes and responsibility for claims given the strict liability standard in California. Like other utilities, SMUD ratings have been recently placed on 'outlook negative' by Moody's, a status that is a precursor for downgrading ratings absent any structural risk changes.").

135. *See id.* (explaining how raising money to pay for claims is complicated by low credit ratings because the ratings lead to low market confidence in the company).

136. The Times Editorial Board, *supra* note 75.

137. *See* GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95 (discussing the dangers of an insolvent utility company: "financially distressed and/or insolvent utilities create much greater risks that wildfire victims will not be paid in full for their wildfires losses, and greater risk for all parties that do business with the utilities").

utilities is ideal, but both parties likely cannot win simultaneously.[138] This unprecedented new law "speaks to the immense financial threat" that electrical companies face in the wake of these fires.[139]

PG&E faces roughly $30 billion in liabilities from the last two fire seasons.[140] Its liability insurance protected the company up to only $1.4 billion beginning August 1, 2018.[141] While the utility listed $71.4 billion in assets and nearly $51.7 billion in debts, the company's liabilities could eventually exceed its market value, which continues to decline.[142] Potentially, PG&E could become insolvent paying off its liabilities.[143] That is where Chapter 79 steps in.[144]

The wildfire fund provides immediate capital to pay off PG&E's liabilities and keep the electrical utility afloat.[145] If a utility follows the safety plans and acts reasonably, it can tap into the fund if its infrastructure sparks a fire.[146] If a utility fails to act reasonably, it will pay off its liabilities without aid from the fund.[147] However, someone still has to pay for these liabilities.[148] Shifting liability simply transfers costs to another party.[149] It does not eliminate them.[150]

Unfortunately, it seems ratepayers will pay for wildfires either way.[151] If the utility acts reasonably, ratepayers pay for just and reasonable costs.[152] Otherwise, ratepayers still contribute to the fund via the $2.50 standard charge on their monthly bills.[153] Chapter 79 ultimately requires ratepayers to pay more now in an effort to pay less later.[154] Regardless of when someone must pay, ratepayers and wildfire victims still pay for utility-ignited wildfires despite ratepayers' lack of involvement in causing responsibility for the fire.[155]

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138. Luna, *supra* note 65.

139. Taryn Luna, *California Utilities Agree To Pay $10.5 Billion Into New Fund*, L.A. TIMES (July 25, 2019), https://www.latimes.com/california/story/2019-07-25/california-utilities-agree-to-pay-10-5-billion-into-new-wildfire-fund (on file with *The University of the Pacific Law Review*).

140. Zach Wichter, *California's Largest Utility Says It Is Bankrupt. Here's What You Need to Know*, N.Y. TIMES (Jan. 29, 2019), https://www.nytimes.com/2019/01/29/business/pge-bankruptcy.html (on file with *The University of the Pacific Law Review*).

141. Eavis & Penn, *supra* note 133.

142. Sammy Roth, *PG&E files for bankruptcy. Here's Why That Could Mean Bigger Electricity Bills*, L.A. TIMES (Jan. 29, 2019), https://www.latimes.com/business/la-fi-pge-bankruptcy-filing-20190129-story.html (on file with *The University of the Pacific Law Review*).

143. Eavis & Penn, *supra* note 133.

144. *Id.*

145. CAL. CIV. CODE § 311–8387 (amended by Chapter 79).

146. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.

147. *Id.*

148. The Times Editorial Board, *supra* note 75.

149. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.

150. *Id.*

151. The Times Editorial Board, *supra* note 75.

152. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.

153. The Times Editorial Board, *supra* note 75.

154. *Id.*

155. *Id.*

Chapter 79 is the "least-worst option for utility customers."[156] Ideally, the fund shifts the burden of wildfire liabilities from ratepayers to shareholders so ratepayers are not alone paying for liabilities through potentially crippling rate increases.[157] Preemptively addressing the issue of financial viability saves ratepayers from providing even more money if a utility company's credit ratings tumble.[158] However, just because utilities do not pay the liabilities does not mean that they magically go away.[159]

Unfortunately, lawmakers need time to work on long-term solutions in order to find meaningful changes.[160] But time means money and that money has to come from somewhere.[161] Steven Weissman, a lecturer at UC Berkeley, noted that "[d]ollars have to come from somewhere. It's either ratepayers, taxpayers, shareholders or victims. As these wildfires might pile up, you're going to reach a point . . . where either ratepayers can't pay their bills, shareholders won't buy the stock and on down the line . . . What a bill like this does is buys a little time."[162] Buying time will only work if lawmakers and electrical utilities use that time wisely.[163] If customers pay for anything, they should pay for actual improvements, not a promise for improvements.[164]

C. Potential Solutions

California's changing landscape calls for a new approach to how the state handles wildfires.[165] Chapter 79 provides a financial buffer for utilities and lawmakers while they find more permanent fire mitigation solutions.[166] Long-term solutions require time, but these solutions should actually prevent wildfires from happening if anything is going to change.[167] Subsection 1 talks about how utility companies can update their current practices.[168] Subsection 2 explores the process of undergrounding power lines to mitigate fire risk.[169] Subsection 3 examines employing Public Safety Power Shutoffs as a long-term solution.[170]

156. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.
157. Telephone Interview with Brandon Ebeck, *supra* note 121.
158. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.
159. Luna, *supra* note 65.
160. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.
161. Luna, *supra* note 65.
162. *Id.*
163. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.*
168. *See infra* Part IV.C.1.
169. *See infra* Part IV.C.2.
170. *See infra* Part IV.C.3.

1. Updating Current Mitigation Practices

In response to newly-mandated wildfire mitigation plans, utilities should look for alternatives to comply with safety regulations and decrease wildfire risk.[171] Updating current infrastructure should be the first option a utility proposes in its mitigation plans.[172]

After the recent increase in deadly wildfires, Southern California Edison plans to replace roughly 3,500 miles of overhead power lines with new, insulated wires to reduce spark risk.[173] Since the Camp Fire, PG&E upgraded its current mitigation practices by implementing new technology and conducting more intensive review of its existing infrastructure.[174] PG&E plans to trim and or remove roughly 375,000 trees around its distribution lines in 2019.[175] Conducting more extensive inspections of the distribution poles and transmission structures would provide additional sources of security for PG&E, especially with its older lines.[176] The utility plans to replace bare overhead wires with covered conductors and replace existing equipment with certified low-fire-risk equipment.[177] PG&E plans on taking even further proactive steps by upgrading transformers to operate with more fire-resistant fluids, and install more fire-resistant poles.[178]

A utility company's practices of investigating its own infrastructure needs changing too.[179] Technological advancements, like real-time weather monitoring and aerial drone patrols could give more accurate and current information on weather and vegetation conditions.[180] While the total cost of these measures is unknown, technology can prevent fires by identifying risks and trends in greater, more geographically localized detail.[181]

Working with existing infrastructure and updating the current system is likely the best option for immediate relief.[182] Implementing "proper vegetation

171. PAC. GAS & ELEC. CO., PACIFIC GAS AND ELECTRIC COMPANY AMENDED 2019 WILDFIRE SAFETY PLAN (2019) (on file with *The University of the Pacific Law Review*).

172. *Id.*

173. *California Utility Replacing Thousands Of Miles Of Power Lines To Reduce Wildfire Risk*, CBS SF BAY AREA (Sept. 10, 2018), https://sanfrancisco.cbslocal.com/2018/09/10/ca-utility-replacing-1000s-of-miles-of-power-lines-to-reduce-wildfire-risk/ (on file with *The University of the Pacific Law Review*).

174. *See* Luna, *supra* note 139 (outlining PG&E's new mitigation practices, which include installing new localized weather monitoring stations and high-definition cameras that spot wildfires, even though the latter plan is optional according to the company).

175. Matthew S. Schwartz, *PG&E Could Shut Off Power For Millions To Prevent Wildfires*, NPR (Feb. 7, 2019, 5:08 AM ET), https://www.npr.org/2019/02/07/692249102/millions-could-lose-power-under-pg-es-plan-to-prevent-wildfires (on file with *The University of the Pacific Law Review*).

176. *Id.*

177. PAC. GAS & ELEC. CO., PACIFIC GAS AND ELECTRIC COMPANY AMENDED 2019 WILDFIRE SAFETY PLAN, *supra* note 171.

178. *Id.*

179. *Id.*

180. Luna, *supra* note 107.

181. *Id.*

182. PAC. GAS & ELEC. CO., PACIFIC GAS AND ELECTRIC COMPANY AMENDED 2019 WILDFIRE SAFETY

management practices, replacing wooden poles with steel, concrete, or composite ones, or reinforcing utility poles with guy wires" could be just as effective as other methods.[183] Unfortunately, for a company like PG&E, this is a much larger task than it seems.[184]

PG&E has over 100,000 circuit miles of electric distribution lines and roughly 18,500 circuit miles of interconnected transmission lines.[185] Updating these lines would take immense amounts of man power, money, and time.[186] PG&E noted that performing routine inspections and cutting back on vegetation could cost $75 billion.[187] After all the upgrading, when does it become infeasible for a utility to keep fixing a broken system of older power lines rather than finding better permanent replacement?[188]

2. Undergrounding Power Lines

A popular and common alternative to using overhead wires is putting them underground.[189] Undergrounding is the process of placing electric infrastructure underground in trenches.[190] Burying lines can drastically reduce exposure to weather conditions that cause fires while increasing reliability during these fire-causing conditions.[191] Nationally, roughly 25% of newly installed distribution and transmission lines are underground.[192]

Undergrounding seems like an obvious solution, yet it is the most

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PLAN, *supra* note 171.

183. *See* Theodore J. Kury, *Why Doesn't the U.S. Bury its Power Lines?*, THE CONVERSATION (Oct. 12, 2018, 6:47 AM ET), http://theconversation.com/why-doesnt-the-u-s-bury-its-power-lines-104829 (on file with *The University of the Pacific Law Review*) (mentioning how implementing these measures might actually cost less than alternative efforts).

184. PAC. GAS & ELEC. CO., PACIFIC GAS AND ELECTRIC COMPANY AMENDED 2019 WILDFIRE SAFETY PLAN, *supra* note 171.

185. *Company Profile*, PAC. GAS & ELEC. CO. (last visited June 29, 2019), https://www.pge.com/en_US/about-pge/company-information/profile/profile.page (on file with *The University of the Pacific Law Review*).

186. *See* PAC. GAS & ELEC. CO., PACIFIC GAS AND ELECTRIC COMPANY AMENDED 2019 WILDFIRE SAFETY PLAN, *supra* note 171 (describing the expansion of inspections and the high numbers of assets that need maintenance).

187. Luna, *supra* note 107.

188. *See id.* (illustrating the high costs associated with inspections and unlikelihood of completing inspections within the time necessary).

189. *Facts About Undergrounding Electric Lines*, PAC. GAS & ELEC. CO. CURRENTS (Oct. 31, 2017), http://www.pgecurrents.com/2017/10/31/facts-about-undergrounding-electric-lines/ (on file with *The University of the Pacific Law Review*).

190. *Id.*

191. KENNETH L. HALL, EDISON ELECTRIC INST., OUT OF SIGHT, OUT OF MIND 2012: AN UPDATED STUDY ON THE UNDERGROUNDING OF OVERHEAD POWER LINES, *available at* https://www.eei.org/issuesandpolicy/electricreliability/undergrounding/Documents/UndergroundReport.pdf (Jan. 2013) (on file with *The University of the Pacific Law Review*); *see* Luna, *supra* note 107 (highlighting how failing to cut back vegetation, trees, and brush near power lines before dry, hot weather creates high-fire risk conditions).

192. Kury, *supra* note 183.

complicated and expensive option.[193] A PG&E spokesperson noted that "[u]ndergrounding power lines is not a silver bullet that solves all of these problems."[194] On average, burying lines costs about ten times more than stringing them overhead.[195] Undergrounding lines costs roughly $1 million per mile, depending on geography and population density.[196] And, due to California's population distribution between densely populated cities and rural areas, serving the entire state would likely take significantly more cable.[197]

North Carolina explored undergrounding its power lines after devastating ice storms ravaged the state in 2002.[198] The project never began because the state projected it "would take 25 years to complete and increase electricity rates by 125%."[199] Most states that explore this alternative ultimately reject undergrounding because of the prejudicial financial impact it has on customers.[200]

Undergrounding power lines complicates a utility's ability to detect problems with the line.[201] "When power lines are underground, it's more difficult to locate the source of the outage. It takes more time to repair."[202] Underground power lines are less accessible, which prolongs the duration of outages.[203] Even if utilities do bury their lines, underground lines are still susceptible to weather exposure as overhead feeders control most of the underground systems.[204]

While undergrounding power lines mitigates risk from debris and weather exposure, it does not completely eliminate that risk.[205] Burying lines can make them more prone to damage from other severe types of weather, but common fire areas might not experience such conditions.[206] High flood or moisture areas would likely need retrofitted lines to handle such conditions.[207]

The massive expense of undergrounding is a real concern for companies

193. *Id.*

194. Simon, *supra* note 103.

195. Jeffrey Feldman, *Why Aren't Power Lines Buried in the U.S. Like They Are in Europe?*, ELECTROCUTION LAWYERS PLLC (Aug. 25, 2016), https://www.electrocuted.com/2016/08/25/bury-power-lines-underground-to-prevent-electrocution-deaths/ (on file with *The University of the Pacific Law Review*).

196. Kury, *supra* note 183.

197. Feldman, *supra* note 195.

198. Kury, *supra* note 183.

199. *Id.*

200. *Id.*

201. Simon, *supra* note 103.

202. *Id.*

203. Kury, *supra* note 183.

204. *See* HALL, *supra* note 191 (explaining how underground systems are not completely separate from traditional overhead power lines because some sections of the underground grid are supplied by power from traditional overhead lines).

205. Kury, *supra* note 183.

206. *See id.* (noting how severe weather like storm surges, flooding, permafrost, and rocky subsoil can cause damage to the underground lines).

207. *Id.*

already facing insolvency.[208] Given the cost of converting existing overhead lines to underground, it might not be possible to completely bury an entire power system.[209] Utilities and the CPUC should explore burying lines in high-fire risk areas.[210]

Each utility should compare the cost of undergrounding with the cost to participate in Chapter 79's wildfire fund when determining alternatives moving forward.[211] By comparison, San Diego Gas & Electric ("SDG&E") will pay its 4.3% share, roughly $450 million, to join the fund.[212] Southern California Edison agreed to pay an initial $2.4 billion to join the fund, as did PG&E, which will pay roughly $4.8 billion to opt into the fund.[213] These investments are substantial, but a company should consider this cost to the cost of partially or entirely undergrounding its system when searching for alternatives moving forward.[214]

3. Public Safety Power Shutoffs

Utility companies shut off power during high-risk fire weather conditions via Public Safety Power Shutoffs ("PSPS").[215] Shutting off power is a quick and controllable solution to imminent fire danger.[216] Earlier in the year, PG&E cut power to 21,000 residents for two days because of high-risk fire conditions.[217] Since 2013, SDG&E conducted thirteen PSPSs and has not had a major fire in those present years.[218] The key to PSPSs is to have people on the ground who monitor the lines.[219] SDG&E also has an in-house meteorology team observing temperature, humidity, and wind speed at its stations across the state.[220] These safety measures are intensive and inconvenient but, when done correctly, can be successful.[221]

While shutting off the power is the quickest, most immediate response to high-risk fire weather conditions, it is a last resort for utilities.[222] A SDG&E spokesperson pointed out that "even after the wind dies down you can't just turn the power back on right away."[223] Shutting off power to large areas poses great

208. *Id.*
209. HALL, *supra* note 191.
210. *Id.*
211. Feldman, *supra* note 195.
212. Luna, *supra* note 139.
213. *Id.*
214. Feldman, *supra* note 195; Luna, *supra* note 139.
215. Aguilera, *supra* note 101.
216. *Id.*
217. *Id.*
218. Simon, *supra* note 103.
219. *Id.*
220. *Id.*
221. *Id.*
222. Schwartz, *supra* note 175.
223. Simon, *supra* note 103.

dangers of its own.[224] PSPS's curb fire risk by cutting off power to critical infrastructure.[225] However, medical facilities, museums, grocery stores, and schools are some examples of community resources that could not operate without any power.[226]

This proactive approach might solve immediate problems but is not enough on its own solve the wildfire crisis.[227] There are major dangers associated with cutting off power to a society that requires access to electricity.[228] This temporary solution is not preferable or even reliable, because California should be looking for long-term fire risk mitigation.[229]

V. CONCLUSION

The wildfires in 2017 and 2018 killed 139 people, destroyed communities, and changed the lives of tens of thousands of Californians.[230] "Those people are gone and it can't be replaced and that's the sad part right there . . . they've lost everything."[231] Wildfires will still exist, but that does not mean the Legislature should not continue to act to prevent future wildfires.[232] While utility companies can create safer and more reliable power distribution systems, one solution is not enough to permanently stop wildfires.[233] Nevertheless, there is a problem when the system that powers communities across California is the same system that simultaneously destroys them.[234] Fires will never stop, but the government and businesses can take steps to prevent them.[235]

There is no question the Legislature had to act or risk facing another serious energy crisis.[236] In theory, Chapter 79 appears effective: help ratepayers by allowing quick victim recovery while simultaneously incentivizing greater safety measures.[237] In reality, the bill just provides a cushion for the Legislature and electrical utilities to create better measures and practices for mitigating fire risk moving forward.[238] There is no way to know whether the 2017 and 2018

224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*
230. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.
231. Telephone Interview with Rich Ellison, *supra* note 4.
232. Simon, *supra* note 103.
233. *Id.*
234. U.S. DEP'T OF AGRIC., THE RISING COST OF WILDFIRES OPERATIONS: EFFECTS ON THE FOREST SERVICE'S NON-FIRE WORK (2015), *available at* https://www.fs.fed.us/sites/default/files/2015-Fire-Budget-Report.pdf (2015) (on file with *The University of the Pacific Law Review*).
235. *Id.*
236. The Times Editorial Board, *supra* note 75.
237. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, *supra* note 95.
238. *Id.*

wildfires were outliers or the new normal.[239] Californians would hope though that such a buffer would allow time for a utility to implement meaningful change.[240]

239. *Id.*
240. *Id.*