

17 August 2024

Electricity Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

Submitted via email to hazardsfromtrees@mbie.govt.nz

To whom it may concern,

**Proposal to amend the Electricity (Hazards from Trees) Regulations 2003 to address
'out-of-zone' tree risks**

Electricity Networks Aotearoa (ENA) appreciates the opportunity to submit on the target consultation on the proposal to amend the Electricity (Hazards from Trees) Regulations 2003 (the Tree Regs) to address 'out-of-zone' tree risks (the proposal).

ENA is the industry membership body that represents the 27 electricity distribution businesses (EDBs), listed in Appendix B, that deliver electricity to homes and businesses across Aotearoa. ENA harnesses the collective expertise of members to promote safe, reliable and affordable power for our members' consumers.

ENA appreciates the intent of the proposal is to grant powers to EDBs to manage a long-standing risk to the electricity network assets – vegetation (typically trees) that are outside the zones established by the Tree Regs that nevertheless pose a 'fall risk' to those assets. However, we are concerned that settings included in the proposal, in particular the obligation on EDBs to cover the reasonable costs of tree owners, will make the proposal less effective in practice than the government intends.

In the context of plantation forestry – where many of the sector's concerns related to the Tree Regs arise - we have some significant concerns. By assigning the cost of tree removal to the EDBs, the proposal introduces an element of moral hazard to the actions of tree owners in the forestry context, where trees are continuously being planted, harvested and then replanted. If the tree owner understands that any tree they plant that ultimately grows in a way that threatens the electricity network will be removed at the EDB's cost, they have little or no incentive to avoid such actions in the first place. This manifests as a dead weight economic loss, with these costs ultimately falling to electricity consumers for no benefit to any party – other than perhaps a minor improvement to the simplicity of the tree owners' planting programme.

ENA understands, from the minister's foreword to this consultation, that the government intends to put forward further proposals to amend the Tree Regs; namely:

- access for lines owners,
- restrictions on forestry planting near lines; and
- enabling the Regulations to differentiate between residential trees and commercial forestry.

We support all the above areas for further changes and are eager to assist MBIE with their policy development on these topics.

We understand that government is taking this incremental approach to consultation on proposed changes to the Tree Regs due to a desire to 'get on with' changes as soon as possible. However, this makes it challenging to provide a constructive response on behalf of the distribution sector when it must be contingent upon whether and how future proposed changes come into effect. As MBIE is aware, EDBs' principal concerns related to the workability of the existing Tree Regs is where they are applied to plantation forestry, as mechanisms that work passably well on tree risks that arise occasionally and by exception, break down entirely when applied to a situation with ongoing dense planting and re-planting of vegetation near powerlines. We therefore suggest that MBIE refrain from making any final decisions on how to introduce the risk-based approach put forward in this proposal – which to reiterate, we support the *intent* of – until further changes around the treatment of plantation forestry the minister has signalled in his foreword are understood.

ENA is happy to provide further information and assistance if that would be helpful. Please contact Richard Le Gros, Policy and Innovation Manager, in the first instance – richard@electricity.org.nz.

Yours sincerely



Richard Le Gros
Policy and Innovation Manager

Appendix A: Consultation Questions

1. Do you agree with our proposed approach? If not, why not?

We strongly agree with the *intent* of the proposal – that EDBs have powers to require removal of vegetation (typically trees) that threaten electricity network infrastructure (i.e. poles and wires). Outside of the plantation forestry context where we anticipate trees will only occasionally and by exception grow in such a way as to pose a threat to EDB assets from outside the Growth Limit Zone, EDBs carrying the cost of removal may be reasonable and appropriate.

We are, however, very concerned in the plantation forestry context that the requirement on EDBs to cover the ‘reasonable costs’ of removing commercial trees (i.e. trees grown for a commercial purpose) will introduce a significant moral hazard and lead to several detrimental and unintended outcomes:

- Tree owners will have no incentive to avoid planting trees where they may potentially grow to pose a fall risk to the electricity network
- Recently established common law precedent (Nottingham Forest Trustee Ltd (NFT) v Unison Networks Ltd) may be undermined by granting EDBs these new powers at no cost to the tree owner.
- EDB insurance liabilities/obligations may be affected by these new powers, with a commensurate cost increase to electricity consumers.
- If a programme of significant tree removal occurs because of the proposal, and the costs for doing so fall to EDBs, this will need to be accounted for in the Commerce Commission’s DPP4 determinations, which it currently is not. In particular, such a programme might require a significant increase in planned outages on the electricity networks (to allow for safe working) which will impact EDB SAIDI/SAIFI allowances.
- EDBs may now be liable for any negative outcomes arising from out of zone trees falling on power lines (e.g. fires) if the EDB powers to require removal were not used.

It may be appropriate for EDBs to meet a proportion of the reasonable costs of removal of high-risk fall zone trees during a transitional period as these proposals are brought into effect. The enduring regime, however, must be one where commercial tree owners, not EDBs (and by extension electricity consumers) bear the costs of negative externalities created by tree owner planting practices.

We strongly advise government to amend the proposal so that the cost of removing vegetation under the proposal must be met by the tree owner. This will ensure that the right incentives remain in place for tree owners to (where possible) not plant trees in a way that will lead to these risks arising in the first place.

2. Do you agree with our assessment of the potential benefits and downsides of the risk-based notice power?

We disagree with MBIE’s view of the potential benefits of the proposal. Specifically, we do not agree that the proposal “...*best balances costs between tree owners and works owners...*”

We also do not agree with the following statement as the basis for allocating the costs of tree removal to EDBs:

Broadly speaking, the regulatory regime under Part 4 of the Commerce Act 1986 should allow lines owners to meet the cost of avoiding significant unplanned outages. The commercial forestry sector, by contrast, would have difficulty in passing through cost increases in international markets.

Whether or not the commercial forestry sector can pass on cost increases to international markets is entirely immaterial to the question of whether or not EDBs (and ultimately electricity consumers) should continue to subsidise the negative externalities forestry planting practices and poor vegetation management generate. The obligations to manage risks should be assigned to those best placed to do so, and in the case of trees posing risks to a reliable and secure supply of electricity, the tree owner is clearly best placed to manage such risks. There is no justification to instead assign these costs to electricity consumers to protect the profit margins of private industry and its shareholders.

Furthermore, the existing regulatory regime, which requires EDBs to pay for 'first cut and trim' in perpetuity, has created a system whereby there is no incentive on tree owners not to plant *new* trees (as a commercial forestry owner will continuously do) in unwise or risky locations, with respect to the overhead lines. It is therefore unwise to create a new system for managing 'fall zone risk' which perpetuates this perverse incentive by placing an ongoing obligation on the EDB to pay for the removal of such trees. To do so would be to carry forward the significant deficiencies in the existing regime into this new mechanism for treating fall zone risk trees.

We believe the proposal will remove any incentive tree owners have to avoid planting trees where they might grow to pose a fall risk to the electricity network, and may weaken common law precedent that currently incentivises them to avoid these practices. We understand that MBIE have plans to propose further changes to the regulations, including restrictions on forestry planting near lines; and enabling the regulations to differentiate between residential trees and commercial forestry. It may be that these changes, depending upon whether and how they come to fruition, will address these problems, but as presented here the proposal in its current form does not.

3. How long should a tree owner have to remove a tree after receiving a treefall hazard notice?

Aligning the timescale for removing a treefall hazard with that of a standard 'cut and trim' notice (as MBIE proposes) seems sensible to us.

4. Are specific access arrangements required to carry out risk assessments?

The access arrangements in the existing Tree Regs for the purposes of carrying out vegetation management on private land, should be expanded to explicitly allow for access to carry out the risk assessments envisaged by this proposal. We understand the MBIE are considering changes to the Tree Reg access regime to align with the more enabling setting within the Electricity Act for 'existing works' and we support such changes applying to the access regime for carrying the risk assessments contemplated in this proposal.

5. Is a transition period required for implementation?

There should be a reasonable transition period introduced in the Regulations to allow EDBs a suitable amount of time to survey the wider zone (24m) for fall zone risk trees. Until such time as the EDB has the opportunity to survey any particular section of their network, EDBs should be explicitly exempted from any liability arising from damage caused by trees within that section. As a starting point, a 4 year period should be sufficient and suitable for this purpose.

6. Do you have any other comments on the common elements proposed across our options?

We have some concern that the 24m zone proposed for consideration by the proposal will not capture all fall risk trees. We understand the rationale for using this number, but suggest that the scope of the proposal should simply extend to any tree that is tall enough to damage the electricity network, should they fall.

7. Do you agree with our assessment of the potential benefits and downsides of the alternative risk-based notice power (likelihood OR impact)?

We see some merit in the alternative risk-based notice power (likelihood OR impact) and suggest that MBIE retain this as an option available to EDBs in the Tree Regs.

8. Do you agree with our assessment of the potential benefits and downsides of the alternative mandatory assessment zone option?

We agree with MBIE's assessment of the alternative mandatory assessment zone option. In particular we agree that this would be unreasonably onerous on EDBs for no significant additional benefit in risk mitigation.

9. Do you have any comments on further matters that should be taken into consideration when designing amendments to the Regulations that reduce the risks of treefall outages, particularly during severe weather events, without imposing unreasonable costs on stakeholders and consumers?

The costs of unexpected outages to electricity supply caused by treefall are significant, both in terms of the direct damage caused to the electricity distribution networks, and the second and third-order effects suffered by electricity consumers and communities. There is no single 'silver bullet' that will eliminate this risk entirely, and the best that can be achieved is to mitigate the risk to a prudent level.

As MBIE is aware, EDBs' principal concerns related to the workability of the existing Tree Regs is where they are applied to plantation forestry, as mechanisms that work passably well on tree risks that arise occasionally and by exception, break down entirely when applied to a situation with ongoing dense planting and re-planting of vegetation near powerlines. We therefore suggest that MBIE refrain from making any final decisions on how to introduce the risk-based approach put forward in this proposal – which to reiterate, we support the intent of – until further changes around the treatment of plantation forestry the minister has signalled in his foreword are understood.

Ultimately, the best way to reduce the risks of treefall outages, is to ensure that trees are not deliberately planted where they will grow to pose a risk to electricity infrastructure. The best

way to achieve this is to place incentives on those that decide where and how planting of such trees take place (the tree owners) to not plant trees in those inappropriate places.



Appendix B: ENA Members

Electricity Networks Aotearoa makes this submission along with the support of its members, listed below.

Alpine Energy
Aurora Energy
Buller Electricity
Centralines
Counties Energy
Electra
EA Networks
Firstlight Network
Horizon Energy Distribution
MainPower NZ
Marlborough Lines
Nelson Electricity
Network Tasman
Network Waitaki
Northpower
Orion New Zealand
Powerco
PowerNet
Scanpower
The Lines Company
Top Energy
Unison Networks
Vector
Waipa Networks
WEL Networks
Wellington Electricity Lines
Westpower