July 31, 2015

Ms. Kirsten Walli

Board Secretary

Ontario Energy Board

Suite 2700, 2300 Yonge Street

P.O. Box 2319

Toronto, ON, M4P 1E4

Dear Ms. Walli:

**EB-2015-0040 – Consultation on the Regulatory Treatment of Pensions and**

**Other Post-employment Benefit Costs in the Electricity and Natural Gas Sectors**

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On May 14, 2015, the Ontario Energy Board ("Board") announced its intention to review the regulatory treatment of pensions and other post-employment benefits ("OPEB”) costs in the electricity and natural gas sectors. For the initial round of submissions, interested parties were invited to provide written comments on a number of issues included in the Board's May 14, 2015 letter. The following are the submissions of the Consumers Council of Canada ("Council") with respect to the questions posed in the Board's May 14, 2015 letter. The Council does not intend to answer all of the Board's questions at this stage in the process.

***GENERAL PRINCIPLES***

1. **What principles should the Ontario Energy Board (“OEB”) adopt in addressing pension and other post-employment benefit (“OPEB”) costs issues? Potential principles include: consistency across the gas and electricity sectors; intergenerational equity; financial protection for future ratepayers; ensuring the most efficient level of costs for ratepayers; stable cost levels; pension costs which are comparable as measured by other benchmarks, etc.**

The Council submits that the OEB should be guided by the principle of fairness within the ratepayer population (intergenerational equity) where responsibility for costs is allocated based on cost causation when addressing pension and OPEB cost issues. To the extent possible future ratepayers should not subsidize current ratepayers and current ratepayers should not subsidize future ratepayers. Also, costs should be kept at stable and sustainable levels that reflect a reasonable level of costs for ratepayers.

Benchmarking pension and OPEB costs between Ontario utilities alone would not be useful. Different utilities have different compensation strategies which rely on varying mixes of base salary, incentive payments, equity compensation, education allowances, long-term disability and parental leave payments, vacation and sick pay, employment benefits, pension benefits (defined contribution, defined benefit, varying contribution ratios), and OPEB. Benchmarking should be undertaken with companies (private or public) with similar compensation strategies.

When addressing the pension and OPEB costs issues minimizing the regulatory burden should also be considered. The costs to collect the information compared with the expected outcomes should be assessed.

It is important that these principles be applied consistently across all energy regulated entities including Ontario Power Generation Inc. (“OPG”) and the Independent Electricity System Operator (“IESO”).

1. **Are there other types of costs previously considered by the OEB that provide suitable analogies for the consideration of pension and OPEB issues (for example, deferred taxes, asset retirement obligations and site restoration costs)?**

The Council submits that the Board could look at other types of costs previously considered by the OEB but that they could also look at other external types of costs. Pensions are subject to significant regulatory oversight by the Financial Services Commission of Ontario (FSCO), which establishes reporting and minimum annual funding requirements under the *Pension Benefits Act* (Ontario). The Council suggests that the requirements of this regulator could be reviewed to look for other types of costs that the Board could consider. Also, the individual utility’s internal governance requirements could be reviewed for possible other types of costs applied to pension and OPEBs.

***INFORMATION REQUIREMENTS***

1. **Should the applicants be required to compare their pension and OPEB costs to industry norms and/or other benchmarks? (Note: It is the OEB’s expectation that the next phase of the consultation will consider the development of a complete set of new or incremental information that should be filed in applications seeking cost recovery for pensions and OPEBs).**

As mentioned above, with respect to costs, both pensions and OPEBs need to be benchmarked against companies (private or public) with similar compensation strategies. This is important since, for example, a comparison of returns on pension plan assets needs to ensure the companies have similar investment objectives, company objectives, plan design, risk tolerances, demographics, etc.

Any benchmarking should also include a comparison regarding the sharing of the costs between the employer and employees, given that the employer costs are paid by ratepayers.

1. **What other relevant information should the Board evaluate in order to effectively assess the pension and OPEB costs that a rate-regulated entity is seeking to be included in the rates charged to customers?**

Monitoring the variances between accounting costs, recovery in rates and cash outlays of pension and OPEB costs between different plans could be useful. This could be a means determining whether a utility’s practices are a cause for concern. The underlying assumptions of the utility’s plan, such as discount rates, expected long-term rate of return on assets, salary escalation rates, mortality rates, and medical/dental cost trends could also be monitored.

***ACCOUNTING AND RECOVERY IN RATES***

* 1. **Should the OEB establish accounting and recovery methods for both the electricity and gas sectors?**

A standard approach should be used for regulatory purposes across all regulated entities, both electricity and gas, as mentioned above.

* 1. **What criteria should be considered to determine the appropriate approach?**

The criteria should match the general principles identified in the response to question 1 including:

* Fairness within the ratepayer population (intergenerational equity),
* Any benchmarking should be undertaken with companies (private or public) with similar compensation strategies and
* Minimizing the regulatory burden should be considered. The costs to collect the information compared with the expected outcomes should be assessed.
	1. **If one method is adopted, what should it be: cash (pay-as-you-go) basis, funding contribution basis, accrual (accounting cost) basis or another method? (please provide details)**

The Council supports the use of the cash basis for both pension and OPEB expenses as it ensures that the costs paid by the ratepayers occur when the costs are paid by the utility, thereby minimizing intergenerational inequities. The Council agrees with the Board’s concern highlighted in the EB-2013-0321 Decision with Reasons dated November 20, 2014. (p. 88):

*"The Board is concerned that any money collected from ratepayers today, in excess of the cash requirements, is not being used to fund future pension and OPEB cash requirements. The Board has considered both OPG’s needs and those of ratepayers. In the absence of a Board policy, the Board will not allow the collection of funds from ratepayers in 2014 and 2015, of an amount higher than OPG’s cash needs, when OPG’s use of the excess funds is not understood, and the benefit to ratepayers is uncertain."*

As well as the Board’s concern regarding its OPEB expense (EB-2013-0321 p. 90):

*"The Board is not confident OPG has undertaken the level of cash flow analysis required to ensure it will have sufficient cash available as a corporation, when its cash needs exceed accrued expenses. It would be inappropriate to collect revenues today in excess of cash requirements and then turn to ratepayers in the future, when cash requirements exceed accrued expenses. The Board must ensure ratepayer interests over time are fully considered."*

The Council has reviewed the submission of the London Property Management Association and supports its response regarding the appropriateness of the cash basis.

* 1. **Should the method for recovering costs relating to registered pension plans be different from that used for unregistered pension plans and OPEB plans?**

No. The method for recovering costs may be the same for both.

* 1. **Should the OEB take into account impacts on financial reporting (US GAAP, ASPE and IFRS), legal, and tax matters?**

No comment at this time.

* 1. **If so, what are the issues that should be considered when determining the appropriate approach?**

No comment at this time.

* 1. **For comparative analysis, how should the OEB address differences that arise from (driven by) the basis of accounting that is used by a rate-regulated utility? For example, the treatment of re-measurements under IFRS is different to their treatment under US GAAP and ASPE.**

No comment at his time.

* 1. **Would it be appropriate to establish a deferral or variance account(s) in association with the approaches discussed above in numbers 5) and 6) respectively?**

The Council believes that if the cash basis is applied that it is appropriate to establish a deferral account similar to the new deferral account established for OPG (EB-2013-0321) to record the differential between the accrual and cash valuations for pension and OPEB expenses.

* 1. **How should the account(s) operate?**

The Council does not have a specific recommendation at this time. There are a number of options that could be considered. They could capture all of the differences between estimated and actual costs, which the utility could either (i) bring forward at a subsequent application for disposition or (ii) automatically include in a subsequent year’s rates for refund/recovery after the balance reached a certain threshold amount (like a rolling variance account where a pre-defined amount can be cleared annually).

* 1. **Should interest be applied to the account(s), and if so, why?**

Interest should be applied to the account(s) provided these are cash costs, so that in the event that the utility over-collects, ratepayers are fairly compensated and earn a return on this over-collection. Conversely, if a utility is required to fund costs prior to recovering them in rates, there would be an interest cost payable to the utility for this cash outlay.

* 1. **How should the transition from the current practice to the new method of recovery be addressed?**
		1. **Should the transition be phased-in, applied retrospectively with catch-up adjustments for prior periods, prospectively with no adjustments for prior periods or a combination of any of these methods?**

No comment at this time.

* + 1. **Should a generic approach be used or should the transition be addressed on a case-by-case basis?**

No comment at this time.

* 1. **Would it be appropriate to establish some form of segregated fund or similar set-aside mechanism for amounts which are collected from ratepayers before they are paid out?**

The Council does not think it is appropriate to establish a segregated fund or similar set-aside mechanism as this could support an intergenerational subsidy.

* 1. **What tax, legal, accounting or other issues arise?**

No comment at this time.

* 1. **How should the transition to the new practice be addressed?**
		1. **Should the transition be phased-in, applied retrospectively with catch-up adjustments for amounts collected from ratepayers to date but not yet paid out, prospectively with no adjustments for prior periods or a combination of any of these methods?**
		2. **Should a generic approach be used or should the transition be addressed on a case-by-case basis?**

No comment at this time.

1. **What information should the utilities report and how frequently should it be reported?**

Each utility should provide the information currently filed quarterly as part of the Reporting and Record keeping Requirements (RRR) reports as well as copies of the utility’s actuarial valuation reports filed as part of the utility’s rate filing. Any additional information requirements should be imposed on a case-by-case basis.

If you require any further information or clarification do not hesitate to contact me.

Sincerely,

**Julie E. Girvan**

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