



**POWER
WORKERS'
UNION**

May 16, 2019

VIA EMAIL: PSconsultations@ontario.ca

Karen Hughes,
Deputy Minister, Treasury Board Secretariat
Secretary of Treasury Board and
Management Board of Cabinet
99 Wellesley Street West
Room 5320, Whitney Block
Toronto, ON M7A 1A1

Dear Ms. Hughes,

Re: Ontario Public Sector Consultations

I am writing on behalf of Power Workers' Union (the "PWU"). The PWU was invited to and participated in the Energy Sector consultation which was conducted on May 9, 2019, in Toronto. The purpose of this letter is to reiterate and amplify the comments made by the PWU at the consultation.

The PWU's attendance at the consultation was informed by the information provided in your invitation dated April 4, 2019, together with the comments of the President of the Treasury Board referenced therein. As indicated in your invitation, the apparent object of the Government in the process is "restoring sustainability to Ontario's public finances while preserving critical front-line services." This message was re-iterated in the comments made by the facilitator of the consultation Mr. Trevor Lawson, in his introductory remarks. Specifically, Mr. Lawson indicated that the Government's concern was the level of the provincial debt and deficit, and the constraints placed on the Government's finances by virtue of the costs to service that debt.

After Mr. Lawson's opening remarks we inquired as to the scope of this sectoral consultation and were advised that it consisted of four entities: Ontario Power Generation ("OPG"), the Independent Electricity System Operator ("IESO"), the Electrical Safety Authority ("ESA") and the Ontario Energy Board ("OEB"). The PWU represents employees at OPG, IESO and ESA, but not the OEB.

This information confirmed to the PWU what it had suspected – this sectoral consultation appears to have been convened on the basis of a misapprehension. The fact is that none of the costs of any of the four entities mentioned above are borne by the taxpayers of Ontario, nor form any part of the fiscal responsibility of the Government of Ontario. As a consequence, modifying those costs, in any manner whatsoever, will not affect Ontario's debt, deficit or financing costs in any respect. In fact, at least in the case of OPG, it is a net

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contributor to the *revenues* of the Province by virtue of the dividends that it pays to the Province.

When PWU representatives pointed out this fact, Mr. Lawson advised that the Government was also concerned about electricity prices. Be that as it may, one would have thought that if that were in fact the purpose of the consultation, the Government might have said so, rather than relying on an objective which is simply inapplicable.

Assuming that Mr. Lawson accurately represents the Government's position, and that the Government is seeking to impact electricity bills by influencing compensation paid to unionized workers of OPG, IESO, ESA and the OEB, this effort is similarly ill-conceived.

The aggregate electricity bills paid by all customers, of all classes in Ontario on an annual basis are approximately \$20 billion.¹ There are a variety of elements of this total cost, including generation costs, transmission costs; distribution costs, regulatory costs, and the Global Adjustment.

ESA

The costs associated with the ESA are not recovered through electricity bills at all. Rather, the ESA's costs (as a not for profit corporation), it recovers its costs through the fees that it charges its customers directly for the services it provides. In 2018, the ESA's total costs were approximately \$110 million, all of which were recovered in fees.² In summary, the ESA costs have no impact on the provincial debt or deficit, no impact on electricity bills, and is a trivial portion of the overall cost of electricity.

IESO

The costs associated with the IESO are recovered through electricity bills. For the past three years, the IESO's annual costs have been stable at approximately \$190 million per year. Obviously, compensation costs constitute only a fraction of this amount. No amount can be included on a bill unless and until it is approved by the OEB which has broad exclusive jurisdiction to approve or not approve the proposed fee based on the reasonableness of the costs. In summary, the IESO costs have no impact on the provincial debt or deficit, and only a trivial impact on the overall cost of electricity. Even assuming adjustments

¹ See 2016 Ontario Planning Outlook, published by the IESO, p. 4: <http://www.ieso.ca/-/media/Files/IESO/Document-Library/planning-forecasts/Ontario-Planning-Outlook/Ontario-Planning-Outlook-September2016.pdf?la=en>

² See ESA Annual Report: <https://www.esasafe.com/assets/files/esasafe/pdf/Annual%20Report/ESA-AR2018-Final-web.pdf>

to compensation were appropriate and achievable, such adjustments would have no measurable impact on electricity bills.

OEB

The PWU does not represent employees of the OEB. In any event, the total costs of the OEB are approximately \$45 million per year.³ These costs include the OEB's activities in respect of both the electricity and gas sectors. Since all of these costs are recovered through gas and electricity rates, they have no impact on the provincial debt or deficit. In any event, even in aggregate, these costs represent a trivial share of the total annual cost of electricity. Even assuming adjustments to compensation were appropriate and achievable, such adjustments would have no measurable impact on electricity bills.

OPG

OPG's costs are recovered through electricity bills and are much more material in size than either the ESA or IESO. However, all of these costs are reviewed by the OEB for reasonableness prior to approval. The OEB has the authority to "disallow" any costs and preclude them from being passed through to customers when it reviews OPG's proposed rates. The OEB's power to "disallow" costs extends to costs which OPG is legally required to pay pursuant to the terms of collective agreements. As a consequence, any and all OPG costs (including compensation costs) which are included in customer bills have been determined by an independent regulator to be reasonable. In any event, compensation costs constitute only a fraction of the costs of OPG's total generation costs. The PWU estimates that the aggregate annual cost of PWU represented employees at OPG is no more than 3% of the total cost of Ontario's total cost of electricity. As a consequence, even assuming adjustments to compensation were appropriate and achievable, such adjustments would have trivial impact on electricity bills.

Finally, the PWU notes that the level of the costs in question are derived from a collective agreement that was determined by an expert independent interest arbitrator, who was imposed by statute put in place by the current government of Ontario.

The PWU's Response to the Consultations and the Questions Posed by the Government in those Consultations

At the consultation and after Mr. Lawson made his introductory remarks concerning Ontario's debt and deficit, Mr. Lawson, on behalf of the Government, asked four questions. These four questions were the only issues that the Government wanted to hear about. The Unions in attendance, including the PWU, asked for more information, asked further questions of the Government

³ <https://www.oeb.ca/oeb/ Documents/Corporate/OEB Business Plan 2017-2020.pdf>

representatives in attendance, asked for copies of the Government officials notes of the Consultation and asked to review any submissions made by employers who the Unions understood had their own consultations with Government officials. Mr. Lawson took those questions and requests under advisement. As of Tuesday May 21, 2019, the PWU has not received any reply to any of these requests.

We do not propose to set out the four questions posed by the Government but we would like to point out that asking four narrow questions is not a substitute for a proper and meaningful consultation process on a particular piece of legislation or a proposed Government direction.

The PWU and the other Unions in attendance all requested copies of any studies and/or analysis done by the Government that would shed light on the four questions. There has been no answer to our reasonable request. We can only assume that the Government has not conducted any such studies or analysis.

In response to the four questions posed by the Government at the consultations, the PWU's answer is clear and consistent. The PWU has a mature, sophisticated and complex collective bargaining relationship with the employers with which it bargains in the energy sector. The PWU would note that some of those employers are also in the private sector. In all sectors in which the PWU bargains, it sits down with employers, it makes demands, it listens to the demands of employers and it negotiates fair and balanced collective agreements that work for its members and for their employers. The PWU has been doing this for years, in good times and in bad times. It has negotiated complex collective agreement provisions in typical bargaining situations, as well as in a range of unique and challenging situations like the closing of coal-fired generating plants, the scheduled closing of the Pickering Nuclear Generating Station and the leasing to a private employer of OPG owned assets at the Bruce Nuclear Generating Station, the IPO of Hydro One.

It is through these free collective bargaining negotiations that the parties to a collective agreement find solutions to complex problems, which solutions benefit PWU members, their employers and the public at large. What is entirely unhelpful is the Government meddling in these negotiations by imposing its view of "compensation growth", "gain-sharing" or "growth-sharing" (to use some of the phrases from the four questions).

The PWU does not need any assistance or interference from this Government (or any other Government) in negotiating or arbitrating new collective agreements. Nor does the PWU believe that Government interference in collective bargaining in the energy sector will produce any positive results for the "taxpayer" or for Government's fiscal issues. Wage caps are a short-sighted attempt to control costs that, in the long run, are bound to fail.

Apart from it being a generally bad idea, legislative interference in free collective bargaining, whether through “legislated caps on allowable compensation increases that can be negotiated in collective bargaining or imposed in binding arbitration” is clearly unconstitutional. The Courts have made this clear. No Government official was prepared to rule out the use of the Charter’s “notwithstanding” clause to immunize such legislation from Constitutional scrutiny.

The PWU urges this Government to not bring forward any proposed compensation limiting legislation. However, if the Government does so, it should allow the Courts to determine whether the Government has the constitutional authority to enact such legislation. The “notwithstanding” clause should not be used casually and should never be used to insulate the compensation cap legislation that the Government clearly intends on introducing from constitutional scrutiny.

Finally, the PWU is always prepared to engage in dialogue, consultations, negotiations and any other forms of discussions with Government, its employers, employer associations and anybody else regarding the energy sector, how it can succeed in Ontario, and how that success can ensure the energy sector continues to provide secure unionized jobs in the Province of Ontario.

The PWU is very concerned that the Government is not engaging in this dialogue in good faith and is simply “going through the motions” in terms of consulting with the PWU and the other trade unions. If the Government wants to engage in proper consultations where it answers more questions than it asks, where it is prepared to conduct appropriate studies and analysis and share that information, where it is prepared to listen and engage rather than stick to a script and recite rote answers, the PWU is more than happy to sit down and discuss any issues with this Government. The PWU has done so with Governments of all three political stripes in the past and sees no reason why it cannot do so with this Government. However, this Government needs to commit to an open, honest and transparent dialogue and not engage in this particular form of alleged “consultation”.

Should you wish to continue the discussion, please do not hesitate to contact the undersigned.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Mel Hyatt', with a large, stylized flourish extending from the end of the signature.

Mel Hyatt
President