

# **ELECTRICITY PENSIONS TRUSTEE LIMITED**

## **Annual General Meeting – 2023**

Resolutions sponsored by Roger Barnard (UKPN Group)  
and Terry Johnston (E.ON Group) for consideration

### **RESOLUTION 1**

*Annual increase next April for pensions in payment*

Text attached together with Explanatory Note

### **RESOLUTION 2**

*Code of Procedure proposed for Independent Trustees*

Sample draft attached together with Explanatory Note

**RB / TJ**

**Submitted 19.10.2023 and updated 26.10.2023**

# **ELECTRICITY SUPPLY PENSION SCHEME**

## **RESOLUTION 1 : for consideration at the 41st Annual General Meeting of Scheme Members on Tuesday 21 November 2023**

We, the under-signed Members of the Scheme, invite other Members of the Scheme at this Annual General Meeting to consider and, if thought fit, adopt the Resolution set out below, for prompt transmission to the Chairman and Trustees of each ESPS Group

**PROPOSED BY :** Roger Barnard (UK Power Networks Group)

**SECONDED BY :** Terry Johnston (E.ON UK Group)

### **RESOLVED : THAT THIS MEETING . . .**

**Having noted that, pursuant to the provisions of the Scheme:**

- (a) Annual increases for ESPS pensions in payment each April are calculated by reference to the change in the Retail Price Index over the 12 months ending in the previous September, which in principle would result next April in a payment increase of **8.9 per cent** (last year, 12.6 per cent).
- (b) However, if the correctly calculated RPI increase is more than 5 per cent, the Principal Employer may be entitled to apply a different figure for the increase, provided that this figure is not less than 5 per cent.
- (c) Pension increases in the ESPS are, therefore, effectively capped at 5 per cent a year **UNLESS** the Principal Employer positively chooses to pay more than 5 per cent if the calculated increase exceeds that amount.

**And having further noted that:**

- (d) From next April, many ESPS pensioners will have suffered a permanent and irrecoverable reduction in the value of their pensions under the Scheme after two successive years of payment increases below the relevant RPI measure.
- (e) ESPS sponsors for the most part are highly profitable companies with strong cash flows and a genuine concern for their corporate responsibilities, and are expected to help to protect their pensioners during a cost of living crisis.

**Now earnestly requests that:**

- (f) The Principal Employers of the ESPS Groups should pay the full RPI-related pension increase of **8.9 per cent** next April, as is right and proper, and
- (g) Trustees and (if relevant) the Independent Trustees of the Groups should ensure they receive full reasons for any departure from that position.

**EXPLANATORY NOTE ATTACHED**

# **ELECTRICITY SUPPLY PENSION SCHEME**

## **RESOLUTION ON PENSION PAYMENT INCREASES**

### **EXPLANATORY NOTE : 26 OCTOBER 2023**

The purpose of the Resolution (attached above) sponsored by Terry Johnston and Roger Barnard can be stated very simply. Their aim is to encourage this AGM to express a strong and specific **request** to the employers and trustees of the ESPS Groups about the appropriate treatment of pension payment increases next April.

**The first part** of the Resolution reminds all concerned that the relevant RPI-related increase for Scheme pensions in payment next April is **8.9 per cent**. That increase is nearly double the figure of 5 per cent which automatically caps the increase to be paid to Members **UNLESS** the employer positively chooses to pay more.

**The second part** refers to the diminishing value of their ESPS pensions for many pensioners under the Scheme, and contrasts this with the financial security of the ESPS employers and their historically strong sense of corporate responsibility.

**The third and final part** crystallises the implications of the first and second parts into an earnest formal request by this Annual General Meeting: **firstly** that the Principal Employers should pay the full RPI-related increase of **8.9 per cent** to Scheme pensioners next April, and **secondly** that Group Trustees should ensure that they receive full and compelling reasons for any failure to do so.

The ESPS employers often claim that, under the Scheme's rules, paying more than 5 per cent is a discretion that they are entitled to exercise or not exercise as they see fit. It is certainly a discretion, but that is not the end of the story. We need to remember the wise words of the late Lord Denning, probably the most creative and influential judge of the last century.

In a case involving the Home Office's administration of TV licences, Denning said that in English law, whether under contract or under statute, a discretionary power to do something is actually always a **duty** to do the right thing.

So, ladies and gentlemen, bearing in mind that a resolution very similar to this one was supported by some 88 per cent of the voters present at last year's AGM, let us now once again urge the employers to do the right thing.

**Sponsors : Roger Barnard, Terry Johnston**

# **ELECTRICITY SUPPLY PENSION SCHEME**

## **RESOLUTION 2 : for consideration at the 41st Annual General Meeting of Scheme Members on Tuesday 21 November 2023**

We, the under-signed Members of the Scheme, invite other Members of the Scheme at this Annual General Meeting to consider and, if thought fit, adopt the Resolution set out below, for prompt transmission to the Chairman and Trustees of each ESPS Group.

**PROPOSED BY :** Roger Barnard (UK Power Networks Group)

**SECONDED BY :** Terry Johnston (E.ON UK Group)

### **RESOLVED : THAT THIS MEETING . . .**

Supports in principle the terms of the illustrative draft Code of Procedure set out below and requests that EPL and / or the Principal Employer of each Group makes amendments to incorporate this into the relevant Scheme documentation of each ESPS Group where there is currently an Independent Trustee (IT) in office. The Code would apply to the IT when that Trustee is exercising functions under the Scheme in relation to any proposed pension payment increases under the Scheme:

- If the Company decides to ask the IT for consent to cap the increase at 5 per cent, or at some other figure above 5 per cent but less than full RPI, it will advise the Group Trustees and explain its business case for the request.
- The Group Trustees will then consider the Company's proposal and will be given the opportunity of setting out any written representations in a statement addressed to both the Company and the IT.
- The IT may seek such further information from the Company as the IT may consider necessary. All such further information will be shared with the Group Trustees, who will be given a further opportunity to comment on it in writing.
- The IT may seek such actuarial, legal, accounting, and covenant advice as the IT thinks appropriate, and will share any such advice with the Group Trustees.
- The IT will then consider the Company's proposal, any additional information supplied by the Company, the representations made by Group Trustees, and any professional advice received, and will reach a decision.
- The IT would then inform both the Company and the Group Trustees of its decision, which would be binding on all parties.

**EXPLANATORY NOTE ATTACHED**

# **ELECTRICITY SUPPLY PENSION SCHEME**

## **RESOLUTION ON THE ROLE OF INDEPENDENT TRUSTEES**

### **EXPLANATORY NOTE : 26 OCTOBER 2023**

1. By next April, the ESPS Groups will have been actively determining pension increases for their Members which have been driven in two consecutive years by unusually high RPI figures. This situation has exposed one of the least transparent aspects of the existing ESPS governance regime, namely the role of the Independent Trustee (IT) in setting pension increases.
2. Not all the Groups have appointed an Independent Trustee, but those that have will know that where the annual RPI value is greater than 5 per cent, the Company can restrict the payable pension increase to 5 per cent (but no lower) **with the consent of the Group's Independent Trustee.**
3. So where the Company wants to pay pension increases of less than the full RPI value, the IT will be asked to agree, and will need to consider this request carefully and come to a decision.
4. The power to be exercised by the IT in this kind of situation is:
  - (a) **wholly discretionary, and**
  - (b) **likely to be decisive.**
5. It is all the more surprising, therefore, that there is nothing in the Scheme rules that provides guidance to the IT on the formality of the Company's request, or what procedure should be followed in dealing with it, or the principles and factors that should be taken into account, or what role (if any) the Group Trustees should have in coming to a conclusion on the matter.
6. The Scheme Members who sponsor this Resolution (**attached above**) believe that in this context the relevant ESPS Scheme documentation should be updated by the adoption of **a binding Code of Procedure** designed to ensure compliance with current good practice principles of transparency. The contents of such a Code should both reflect and align with the points set out in the Attachment.
7. Members attending this Annual General Meeting are invited to consider and approve the terms of a draft Code of Procedure that is broadly consistent with the illustrative example shown in the Attachment and to which all Group ITs would be asked to commit themselves

**Sponsors : Roger Barnard, Terry Johnston**

**ELECTRICITY SUPPLY PENSION SCHEME**  
**RESOLUTION for consideration at the 41st Annual General Meeting of**  
**Members of the Scheme on Tuesday 21 November 2023**

I, the under-signed, being a Member of the Scheme, invite other Members of the Scheme at this Annual General Meeting to duly consider and, if thought fit, adopt the Resolution set out below, for prompt transmission to the Chairman and Trustees of each ESPS Group

**PROPOSED BY:** John Merritt (UK Power Networks Group)

**RESOLVED THAT THIS MEETING:**

That Scheme Members hereby ask the Scheme Trustee to arrange for the 2024 AGM, and each subsequent AGM, to be held as a face to face meeting unless Government guidance or legislation advises or requires otherwise

**Secretary's Note to the resolution**

The attention of members is drawn to the notes to the Scheme AGM Agenda.

Members' resolutions voted on and carried at the Scheme AGM do not have any power conferred upon them, and cannot instruct EPTL, Group Trustees, Employers, or others involved in the running of the Scheme.

If the above resolution is carried at the Scheme AGM, Electricity Pensions Limited (EPL) and Electricity Pensions Trustee Limited (EPTL) will be notified. EPL and EPTL may or may not decide to take any action in response to the resolution