Eamon Devoy, Ebilou,

General Secretary TEEU, Loughlinstown,

6 Gardiner Row, Celbridge

Dublin 1 Co. Kildare

14th April 2015

Dear Eamon,

I’m writing to you on behalf of ESB Retired Staff Association (ESBRSA), who represent the majority of ESB pensioners, with regard to Pension issues in ESB. As a Trade Union representing serving staff in ESB you will be aware of the importance of having a viable and adequately funded Pension Scheme capable of providing financial security and pension benefits in line with their entitlements for all Scheme members. This would include provision for pension increases in line with CPI.

In that context I wish to raise the following issues:

When the Cost and Competitive Review (CCR), a Tripartite Agreement between Government, ESB and ESB Unions was launched in 1994 and concluded in 1996 the Government enacted the Energy (Miscellaneous Provisions) Act 1995 in order to underpin guarantees in relation to the Pension Scheme. The ESB Actuary has described the wording in Section 20 of this Act as that of a typical “Balance of Cost” Scheme, which in essence requires ESB to be solely responsible for any deficits that may arise from time to time in the ESB Defined Benefit Pension Scheme. ESB, however, have neglected to incorporate this legislation into the Pension Scheme rules and have refused to acknowledge their responsibilities under the 1995 Act. ESB, therefore, is in breach of its statutory obligations under this legislation.

ESBRSA wish to emphasise the importance of this legislation for all Pension Scheme members and would urge your Union to challenge ESB on their statutory obligations under the 1995 Act and their responsibility, as sponsoring Employer, to ensure that the ESB Defined Benefit Pension Scheme is adequately funded in order to provide future pension benefits for all members in line with their entitlements.

ESB have recently published their 2014 Annual Report and for the 5th consecutive year have included the following statement in the Pension Notes to the Accounts and I quote “***ESB has no obligation to increase contributions to maintain benefits in the event of a deficit and the Company does not intend that any further contributions, other than the normal ongoing contributions and the balance of the Company’s €591 million additional contribution (committed to as part of the 2010 Pensions Agreement), will be made.”*** This statement is contrary to ESB’s statutory obligations under the Energy (Miscellaneous Provisions) Act 1995.

Both the Pension Scheme and ESB’s Annual Accounts were very much part of the dispute between ESB Trade Unions and the Company in December 2013, which required the intervention of the LRC in order to arrive at a resolution to the dispute.

ESBRSA wish to know why all Trade Unions in ESB have not challenged the Company on this and other outrageous statements regarding pensions in their Annual Reports for the last 5 years and have not challenged ESB on their statutory obligations under the Energy (Miscellaneous Provisions) Act 1995.

On a separate but related matter ESBRSA understand that that the results of the 2014 Actuarial Valuation on the ESB Pension Scheme will be published later this month. Pensioners are majority stakeholders in the Pension Scheme and ESBRSA as representatives of the majority of pensioners believe that they should be involved in any discussions on the results of the Valuation.

In 2010 both ESB and ESB Group of Unions entered into an Agreement on Pensions to the detriment and exclusion of pensioners. This arose as a result of an Actuarial Valuation of the Pension Fund in 2008. ESBRSA also believe that this agreement entered into by these two parties is detrimental to pensioners who were not party to the agreement and is unconstitutional as demonstrated in a previous Supreme Court Ruling in relation to Registered Employment Agreements (REAs) i.e. It is unconstitutional for two private parties to make an agreement which attempts to be binding on a third party when that third party was not party to the original agreement.

ESBRSA hope that a similar situation will not arise with the latest Valuation and that ESB and the Trade Unions involved will not flout the law when it comes to discussions on the outcome of this Valuation and that ESBRSA will be invited to participate in discussions.

Yours sincerely,

Michael MacNamara, Hon Secretary,

National Executive,

ESB Retired Staff Association

Copy to Trade Unions: ESU, SIPTU, TEEU, UNITE.

Copy to ESB Chairperson and ESB Chief Executive.