

Request for Decision

GSU Shareholder Declaration Recommendation

Presented To:	City Council
Presented:	Tuesday, Oct 08, 2019
Report Date	Wednesday, Sep 25, 2019
Type:	Referred & Deferred Matters

Resolution

THAT the City of Greater Sudbury directs the General Manager of Corporate Services to present a by-law adopting the revised shareholder declaration in Appendix C, with section 4.1.1. being in accordance with Option _____, as outlined in the report entitled “GSU Shareholder Declaration Recommendation”, from the General Manager of Corporate Services, presented at the City Council meeting on September 24, 2019.

Option 1:

That the Board continue to be comprised of five (5) individuals which includes three (3) City directors and two (2) independent directors.

Option 2:

That the Board be comprised of seven (7) individuals which shall include three (3) City directors and four (4) independent directors.

Signed By

Report Prepared By

Kevin Fowke
General Manager of Corporate Services
Digitally Signed Sep 25, 19

Financial Implications

Jim Lister
Manager of Accounting/Deputy Treasurer
Digitally Signed Sep 25, 19

Recommended by the Department

Kevin Fowke
General Manager of Corporate Services
Digitally Signed Sep 25, 19

Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer
Digitally Signed Sep 25, 19

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

This report supplements the report entitled “GSU Shareholder Declaration Recommendation” from the General Manager of Corporate Services presented to City Council on June 25, 2019.

Financial Implications

There are no financial implications associated with this report.

GSU Shareholder Declaration Recommendation

BACKGROUND

This report supplements the report entitled “GSU Shareholder Declaration Recommendation” from the General Manager of Corporate Services presented to Council on June 25th, 2019. When deferring the June 25th report to the September 24th agenda, Council made three requests for information and action:

1. That staff ask for comments from the GSU Board of Directors (“the Board”) on the revised shareholder declaration and dividend policy in the June 25th report.
2. That staff obtain a copy of GSU’s five year capital plan.
3. That a provision be added to the shareholder declaration providing for a review of the declaration every 5 years.

In order to satisfy these information requests and actions City staff met with GSU staff and its Board on two occasions in August and September.

Appendix A contains the comments received from the Board.

Appendix B contains a summary of the capital expenditure plan from GSU’s 2019 Distribution System Plan.

Appendix C contains a revised shareholder declaration which is recommended by staff for Council’s approval. This declaration includes a provision for a review every 5 years.

ANALYSIS

Revised Dividend Policy Adopted by the Board

The two meetings with the Board allowed for further discussion about the interests of both parties. These discussions have produced a revised dividend policy which was adopted by the Board on September 6th, 2019. This revised policy is attached as Appendix D.

Free Cash Flow

The revised policy includes a target dividend set at 25-50% of free cash flow for the year, after net movements in regulatory balance. Free cash flow is the net cash generated by operating and investing activities and calculated by adjusting net income for non-cash items like amortization or accounting for future obligations not actually paid in cash. Movements in regulatory balance refers to the difference between the total cost of power paid by GSU and the fees collected from customers. GSU reports negative (\$1,530,000) one million five hundred thirty thousand dollars and negative (\$631,000) six hundred and sixty thousand dollars on this measure for the past two years (2017 and 2018) respectively. The calculation does not include changes in working capital. This is a non-standard method for calculating free cash flow and results in a very conservative accounting for cash flow at the end of a fiscal period.

The result is that positive free cash flow is highly unlikely and therefore, the dividend formula is highly unlikely to yield an actual dividend.

The revised policy also includes a provision for the Board to declare a special dividend if GSU's consolidated debt to equity ratio falls below 60/40. At the end of 2018, the debt to equity ratio was 67/33.

The revised policy further requires that the calculation and the rationale underpinning any dividend declaration to be presented to the shareholder annually at or before the annual general meeting.

Based on the capital plans outlined in Appendix B (which call for the expenditure of over \$50 million over the next 5 years and the potential to take on new debt of upwards of \$25 million), this ratio is very likely to remain above the 60/40 threshold. Also, with such significant capital plan requirements and the GSUs history of using available cash to finance long term investments in fixed assets like plant and equipment, the corporation is likely to remain cash negative for the foreseeable future.

CGS to have First Right of Refusal on GSU Debt

Discussions with the Board also resulted in a commitment, contained in the recommended shareholder declaration, which provides a "first right of refusal" to CGS on GSU debt. GSU is confident it will be seeking large tranches of external debt in future (up to \$25 million over the next five years). The recommended shareholder declaration contains a provision that would result in GSU obtaining quotations from external lenders and prior to accepting a quotation, the City would have the opportunity to lend funds to the GSU on the same terms and conditions.

The City could use reserves to loan money to the GSU or use its strong AA stable credit rating to borrow money to loan to the GSU. It is possible for the City to borrow for 30 basis points (0.3%) or more less than the rate obtainable by a Municipal corporation like the GSU. If the City financed the full \$25 million GSU anticipates borrowing, a differential of \$75,000 in annual revenue could be realized. This revenue could be used in turn to finance additional City capital projects or be applied against operating requirements and the net tax levy.

Number of Directors

The GSU is seeking to increase the number of Board members from 5 to 7, comprising 4 independent directors and 3 City directors. The Board currently comprises 3 City directors and 2 independent directors.

The GSU relies on, among other documents, the Ontario Securities Commission's National Policy 58-201, which provides guidance on corporate governance practices, including recommending that boards should have a majority of independent directors. The OEB has recently reinforced the requirement for such utility corporations to adopt effective governance mechanism, noting that governance practices will be scrutinized in future rate review applications, though it has as yet refrained from prescribing specific standards. The Board strongly favours an approach that would increase the number of board members and the number of independent board members.

The original GSU Shareholder Declaration Recommendation report presented to City Council on June 25th contained a legal opinion from Aird Berlis LLP which states that while the trend for governance in the Ontario energy sector may be toward greater independence, this is simply a recommendation of OEB, not a requirement. In fact, the OEB has not changed its Affiliate Relationship Code (ARC) which only requires that one third of the board of directors of OEB regulated distributors be independent directors. Consequently, any recommendations for independent directors applies to Greater Sudbury Hydro Inc. (the distribution company), not to GSU which is addressed by the shareholder declaration revisions being contemplated by this report.

The draft shareholder declaration at Appendix C includes the current Board composition at section 4.1.1 and depending on the option Council chooses, staff will prepare a final shareholder declaration for Council to formally accept in the form of a by-law.

Option 1 – The Board continue to be comprised of five individuals which shall include three City directors and two independent directors.

Option 2 – The Board be comprised of seven individuals which shall include three City directors and four independent directors.

REFERENCES

GSU Shareholder Declaration Recommendation Report from June 25th City Council –

<http://agendasonline.greatersudbury.ca/index.cfm?pg=agenda&action=navigator&id=1325&itemid=16938&lang=en>

GSU original wording June 4th Shareholder Declaration	City staff proposed wording changes June 25th	Comments from GSU Governance Committee July 23rd
<p>2.2.5 Business activities that enhance or develop the ability of the corporation to carry any of the activities described in paragraphs 2.2.1, 2.2.2, 2.2.3, and 2.2.4 above;</p>	<p>2.2.5 Business activities that enhance or develop the ability of the corporation to carry any of the activities described in paragraphs <u>Subsections</u> 2.2.1, 2.2.2, 2.2.3, and 2.2.4 above;</p>	<p><i>Proposing wording change – OK</i></p>
<p>3.2 In addition, the Shareholder expects the Board and the boards of directors of the Non-regulated Subsidiaries to observe substantially the same standards of corporate governance as may be established from time to time by any applicable regulatory or governmental authority in Canada for publicly traded corporations, in particular CSA National Policy 58-201 and National Instrument 52-110 with such modifications as may be necessary to reflect the fact that the Corporation and each Non-regulated Subsidiary is not a publicly traded corporation. The Board and boards of directors of the Non-regulated Subsidiaries are also expected to consider and adopt, as appropriate, recognized sources of governance best practices.</p>	<p>3.2 In addition, the Shareholder expects the Board and the boards of directors of the Non-regulated Subsidiaries to observe substantially the same standards of corporate governance as may be established from time to time by any applicable regulatory or governmental authority in Canada for publicly traded corporations, in particular CSA National Policy 58-201 and National Instrument 52-110 with such modifications as may be necessary to reflect the fact that the Corporation and each Non-regulated Subsidiary is not a publicly traded corporation. The Board and boards of directors of the Non-regulated Subsidiaries are also expected to consider and adopt, as appropriate, recognized sources of governance best practices.</p>	<p><i>Proposing to remove reference to CSA National Policy</i></p> <p>Rationale for including:</p> <p>(1) The City’s own AG’s report cited CSA National Policy 58-201 as an authoritative source of governance best practices, and recommended GSU follow these.</p> <p>(2) Right from the founding of GSU, the Shareholder (City) and the Board have strived to have GSU follow governance best practices. In Canada, governance best practices are outlined in these CSA national instruments.</p> <p>(3) Further, the OEB’s governance best practices guidelines are based on CSA’s national instruments as their ultimate source. While voluntary, the OEB ties the quality of governance to rate applications. They look to the governance practices that the organization chooses to follow. Unless GSU chooses to follow something like CSA 58-201 the OEB may assume there is a bias towards</p>

		<p>the Shareholder's interests instead of the ratepayers'.</p> <p>These are the standards for best practice in Canada.</p>
<p>4.1.1. The Board of the Corporation shall be comprised of seven individuals which shall include three City Directors and four Independent Directors, all appointment by Council.</p>	<p>4.1.1 The Board of the Corporation shall be comprised of seven <u>five</u> individuals which shall include three City Directors and four <u>two</u> Independent Directors, all appointment by Council.</p>	<p><i>Proposing change to Board Makeup – Independence</i></p> <p>Rationale for including:</p> <p>(1) The City's own AG recommended that GSU move to a majority of independent directors.</p> <p>(2) This is a guideline in the CSA National Policy 58-201 which is governance best practice nationally; for a majority of independent directors.</p> <p>(3) This is also called for in the OEB guideline on independence; for a majority of independent directors. Same observations and risks with the OEB rate review as outlined above: there is a perception of a bias towards Shareholder interests vs. ratepayer interests at the OEB.</p>
<p>5.1.2 Dividends - a policy relating to enhancing Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and maintaining just and reasonable rates, while providing for dividends to be paid to the Shareholder from the Corporation;</p>	<p>5.1.2 Dividends - a policy relating to enhancing Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and maintaining just and reasonable rates, while providing for dividends to be paid to the Shareholder from the Corporation, substantially in the form</p>	<p><i>Proposing to add Dividend Policy wording to the Shareholder Declaration</i></p> <p>Good governance practice calls for a clear delineation in authority between the Shareholder and Board; the Shareholder Declaration is prescribed and approved by the City, the Dividend Policy is a Board Policy</p>

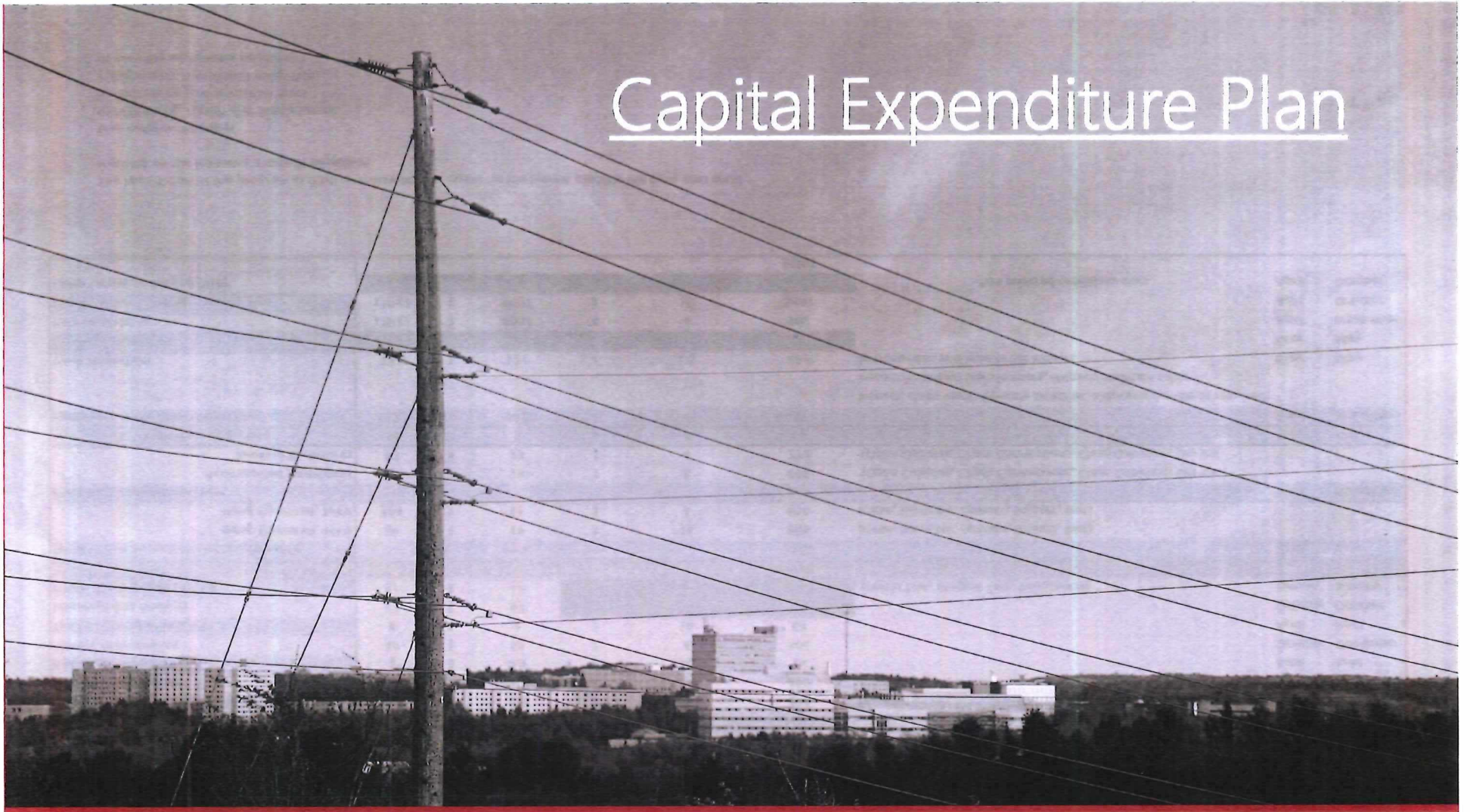
	attached hereto this Shareholder Declaration as Appendix "B";	and is approved by the Board. These two differing types and levels of documents should not be co-mingled. While arguably within legal rights, this is a red flag to the OEB for the Shareholder to prescribe dividends when the gist of the OEB Guidelines is to ensure the independence of this decision. In particular, the OEB highlights their concern with municipalities as shareholder limiting the rights and powers of boards, and dividends are explicitly cited.
N/A	<u>Addition of 8.2</u> <u>The Board shall provide to the Shareholder any and all records of the Corporation or the Subsidiaries within ten (10) days of the Shareholder's written request for same.</u>	<i>Proposing to add request for records to be provided on 10 days written notice</i> GSU is more than willing to provide legitimate records to the City with the exception of records protected by privacy or privilege protection. Since it would be, at times, impractical to make a commitment that GSU would produce any record within a 10 day time period, GSU would be comfortable with wording "within a reasonable period of time."
"Council" means the <u>C</u> city Council of the City of Greater Sudbury;	"Council" means the <u>C</u> city Council of the City of Greater Sudbury;	<i>Proposing to capitalize "City" – OK</i>
<u>"Non-regulated Subsidiaries" means any subsidiary of the Corporation, except Greater Sudbury Hydro Inc.;</u>	<u>"Non-regulated Subsidiaries" means any subsidiary of the Corporation, except Greater Sudbury Hydro Inc.;</u>	<i>Proposing move due to alpha order – OK</i>
N/A – Separate Dividend Policy	<u>Appendix "B" to Shareholder Declaration</u> <u>GREATER SUDBURY UTILITIES INC.</u> <u>DIVIDEND POLICY</u>	<i>Proposing to add Dividend Policy wording to the Shareholder Declaration</i> See 5.1.2 above

Proposing changes to wording of Dividend Policy

There are a number of suggestions from the City's draft Dividend Policy that the Board of GSU finds helpful and is prepared to incorporate into an amended Dividend Policy to be adopted by the Board, these include:

- Including an explicit target dividend, GSU is comfortable with a range of between 25 and 50%
- Moving away from the concept of "normalized comprehensive income" to something much closer to reported net income: net cash flow from operations after net movements in regulatory balances, adjusted for investments
- From a legal perspective, there does need to be a proviso included that any final dividend declaration is at the Board's discretion, taking into account legitimate corporation needs including capital and electricity supply
- In terms of timing, GSU is looking at declaring a regular dividend annually at the April meeting, based on final consolidated audited financial statements
- In the event the Board determines that it cannot declare a dividend, it would report this to the Shareholder at the AGM and provide a full report on the rationale and projections (rather than a quarterly report)
- Generally, it is not GSU's intention to borrow funds to fund dividends
- GSU is comfortable with a four year review date of 2022 – reviewed by the Board, prior to any substantive modification of the Dividend Policy the Board will meet with the Shareholder to discuss
- GSU is comfortable including a provision that it may pay Special Dividends in the event it has substantial surplus funds without reasonable investment alternatives
- Triggering event - the dividend policy will recognize that the Shareholder expects that GSU will achieve a debt/equity ratio of 1.5X (60/40), dropping below this ratio would, under normal circumstances trigger a dividend to bring the DE back to 1.5X.

Capital Expenditure Plan



Capital Expenditure Planning Process - Objectives

- GSHI's CEP Objectives:
 - Invest and maintain assets to achieve the lowest long-term cost of ownership while meeting prescribed codes, statutory requirements, standards and performance targets.
 - Meet customer expectations by improving existing infrastructure to manage growth in support of new and existing customers as well as renewable energy generation connection requests.
 - To support the outcomes of the Asset Management process balancing **cost, reliability** and **risk**.
 - To meet or exceed all requirements with respect to distribution system **safety** such that no undue hazards exist for workers or the public.

Investment Prioritization – Tools and Methods

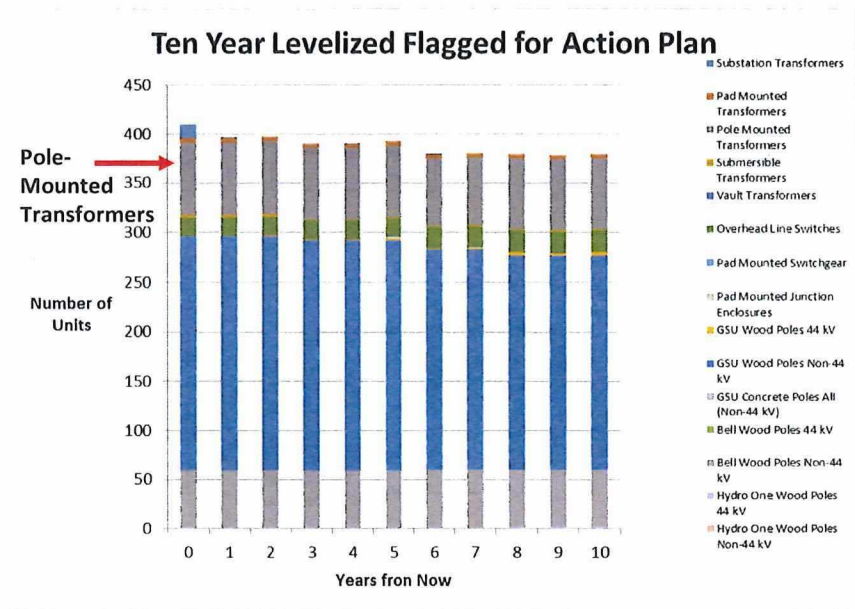
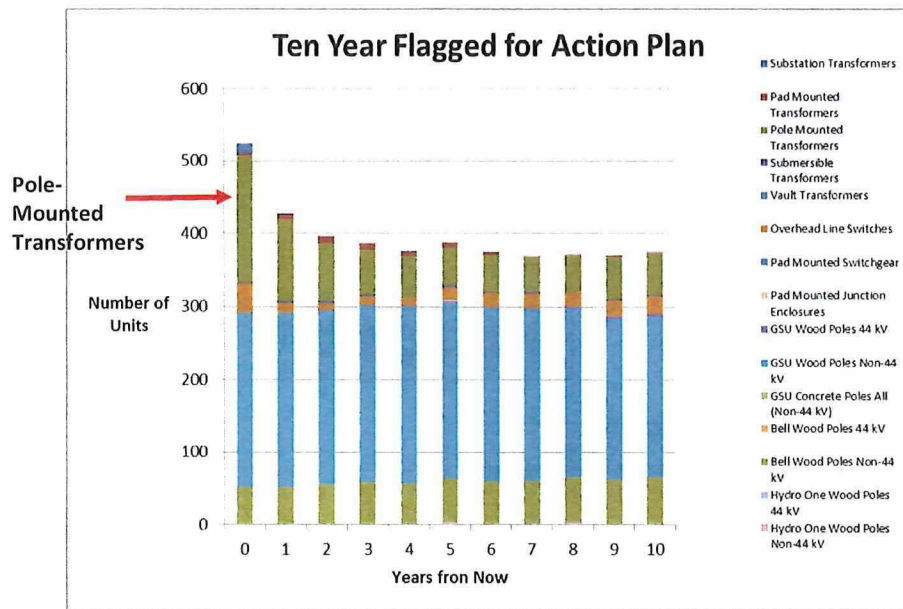
- System Access - first come, first served; non-discretionary; based on resource availability
- System Renewal – derived from the results of:
 - ▣ Asset Condition Assessment (ACA);
 - ▣ Feeder Reliability Assessment;
 - ▣ Customer Satisfaction Surveys/Consultations;
 - ▣ Fleet Management Strategy; and
 - ▣ Service Territory Load Forecast
- System Service – same as System Renewal
- General Plant – derived from results of:
 - ▣ Fleet Management Strategy
 - ▣ Building Condition Assessment (recommended); otherwise “Historical” funding
 - ▣ Subject Matter Experts/“Historical” funding for Tools and Equipment

Pacing Investments

- The vast majority of capital investments related to optimizing asset lifecycle cost belong to the “System Renewal” category and represent annual programs required to sustain the asset base.
- Asset Condition Assessments incorporate a 10 year “Flagged-for-Action” strategy for each assessed asset category (Optimal).
- As it would not be feasible or practical to address all assets immediately, a *levelized* “Flagged-for-Action” Plan is a tool that spreads out (levelizes) the number of assets to be addressed over a greater period of time.

Asset Category		10 Year Flagged for Action Total				10 Year LEVELIZED Flagged for Action Total				Replacement Strategy
		First Year		10 Year		First Year		10 Year		
		Quantity	Percentage	Quantity	Percentage	Quantity	Percentage	Quantity	Percentage	
Substation Transformers		14	30%	17	36%	14	30%	3	6%	proactive
Pad Mounted Transformers		4	0%	54	4%	5	0%	50	4%	reactive
Pole Mounted Transformers		174	5%	793	24%	74	2%	795	24%	reactive
Submersible Transformers		1	6%	15	94%	2	13%	12	75%	reactive
Vault Transformers		0	0%	0	0%	0	0%	0	0%	reactive
Overhead Line Switches		40	2%	211	11%	19	1%	227	12%	reactive
Pad Mounted Switchgear		0	0%	0	0%	0	0%	1	1%	reactive
Pad Mounted Junction Enclosures		0	0%	2	3%	0	0%	2	3%	reactive
GSU Wood Poles	44 kV	0	0%	15	1%	1	0%	39	3%	proactive
	Non-44 kV	240	2%	2600	24%	237	2%	2474	23%	proactive
GSU Concrete Poles	All (Non-44 kV)	0	0%	0	0%	0	0%	0	0%	proactive
	44 kV	0	0%	0	0%	0	0%	0	0%	proactive
Bell Wood Poles	Non-44 kV	51	2%	640	25%	58	2%	638	25%	proactive
Hydro One Wood Poles	44 kV	0	0%	0	0%	0	0%	6	2%	proactive
	Non-44 kV	0	0%	6	4%	1	1%	11	8%	proactive

10 Year "Flagged for Action" Plan



SCHEDULE "A"

To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater
Sudbury

**THE CITY OF GREATER SUDBURY
SHAREHOLDER DECLARATION
FOR
GREATER SUDBURY UTILITIES INC.**

1. Definitions and Purpose

- 1.1. Definitions - In this Shareholder Declaration, defined terms have the meanings set out in Appendix "A" attached hereto.
- 1.2. Purpose - This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation and in some cases, the Subsidiaries. Except as provided in Sections 6 and 9, this Shareholder Declaration is not intended to constitute a unanimous shareholder declaration under the OBCA or to formally restrict the exercise of the powers of the Board or the board of directors of any Subsidiary.

2. Permitted Business Activities

- 2.1. Subject to the restrictions in Section 9, the Corporation and the Subsidiaries may engage in the business activities which are permitted by any law applicable to the Corporation and the Subsidiaries from time to time, including the *Electricity Act*, and as the Board or board of directors of the Subsidiaries may authorize, including, without limitation, the business activities referred to in Subsection 2.2. In so doing, the Corporation and its Subsidiaries shall conform to all requirements of the Ontario Energy Board, the Independent Electricity System Operator and all other applicable regulatory or governmental authorities.
- 2.2. The Corporation or one or more Subsidiaries may engage in any of the following business activities and such other business activities as may be permitted by law and authorized by the Board or board of directors of any Subsidiary, as applicable, from time to time:
 - 2.2.1. Transmitting or distributing electricity;
 - 2.2.2. Owning and/or operating an electricity generation or energy storage facility;
 - 2.2.3. Retailing electricity;

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To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

- 2.2.4. Distributing or retailing gas or any other energy products which is carried through pipes or wires to the user;
- 2.2.5. Business activities that enhance or develop the ability of the corporation to carry any of the activities described in Subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 above;
- 2.2.6. Business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary, as applicable, including providing meter installing, and reading services, and providing billing services and business activities in the utilities and telecommunications area;
- 2.2.7. Renting, selling or maintaining equipment and appliances, including without limitation, hot water heaters;
- 2.2.8. Managing or operating, on behalf of the Shareholder, the provision of a public utility or sewage services; and
- 2.2.9. Providing services related to improving energy efficiency.

3. Standards of Governance

- 3.1. As required by the OBCA, the Board and the boards of directors of any Non-regulated Subsidiary shall supervise the management of the business and affairs of the Corporation and any Non-regulated Subsidiary, respectively, and in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation or the Non-regulated Subsidiary, respectively, and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- 3.2. In addition, the Shareholder expects the Board and the boards of directors of the Non-regulated Subsidiaries to observe substantially the same standards of corporate governance as may be established from time to time by any applicable regulatory or governmental authority in Canada for publicly traded corporations. The Board and boards of directors of the Non-regulated Subsidiaries are also expected to consider and adopt, as appropriate, recognized sources of governance best practices.
- 3.3. The Board will establish a Shareholder Declaration in respect of Greater Sudbury Hydro Inc., which shall set out the expectations of the Corporation, as the

Comment [KG1]: GSU's proposed wording here is connected to the proposal to have more independent board members than councillors on the Board, specifically 4.1.1.

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To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

shareholder of Greater Sudbury Hydro Inc., relating to the governance principles and policies of Greater Sudbury Hydro Inc.

4. Board of Directors

- 4.1. Number of Directors - The Corporation shall be governed by the Board which shall consist of a maximum of twelve Directors to be appointed by the Shareholder. The Shareholder shall, by special resolution, or by Shareholder Declaration, designate the number of members of the Board to hold office from time to time. Accordingly, the number of Directors for the Board shall be as follows:
- 4.1.1. The Board of the Corporation shall be comprised of five individuals which shall include three City Directors and two Independent Directors, all appointment by Council. [redacted]
- The City Directors may include the Mayor or members of Council. The Independent Directors may not be members of Council, City employees or Corporation employees. The directors of GSUI shall also serve as directors on the Boards of the Non-regulated Subsidiary corporations: Greater Sudbury Hydro Plus Inc., Greater Sudbury Telecommunications Inc., Convergen Inc., and 1627596 Ontario Inc.
- 4.1.2. The Shareholder may remove a Director for cause and appoint a new Director in their place.
- 4.1.3. If a Director misses three regularly scheduled meetings of the Board in a twelve month period without prior approval, they shall be deemed to have resigned and their position deemed vacant.
- 4.1.4. All Directors shall remain on the Board(s) until their successors are appointed. This provision shall include the Mayor and municipal councillors, even if their terms on City Council have terminated.
- 4.2. Qualification of Directors - In addition to sound judgment and personal integrity, the qualifications of candidates for the Board will be identified by the Corporation from time to time using a Board Skills Matrix with a gap analysis, including experience and skills such as:
- 4.2.1. Awareness of public policy issues related to the Corporation or a Subsidiary, as applicable;

Comment [KG2]: GSU proposes the Board comprise 7 not 5 members – 4 independent directors and 3 councillors.

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To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

- 4.2.2. Business expertise (including retail experience);
 - 4.2.3. Experience on boards of commercial corporations;
 - 4.2.4. Financial, legal, engineering, IT, accounting and/or marketing experience;
 - 4.2.5. Regulated industry knowledge including, but not limited to, knowledge of municipal electric utilities; and
 - 4.2.6. Knowledge and experience with risk management strategy.
- 4.3. Residency - Preference may be given to qualified candidates for the Board who are residents of the City of Greater Sudbury or of the Municipality of West Nipissing, however, non-residents shall not be excluded from serving as Board members.
- 4.4. Chair and Vice-Chair Position - The Board may elect its own Chair and Vice-Chair
- 4.5. Board Committees - The Board may establish committees of the Board at its discretion The Shareholder anticipates that the Board may establish the following committees:
- 4.5.1. Audit and Finance Committee to oversee financial reporting and associated policies and practices;
 - 4.5.2. Human Resources, Governance and Nominating Committee to oversee senior management compensation, evaluation and succession, corporate governance policies and practices, and to identify, evaluate and recommend potential Independent Director Board candidates to the Shareholder.
- 4.6. Independent Director Nominations - The Shareholder shall consider candidates for the Board nominated by the Human Resources, Governance and Nominating Committee. It is expected that the committee will develop a process that takes into account the qualifications identified in the Board Skills Matrix (4.2) to identify, evaluate and recommend the most qualified candidates to the Shareholder.
- 4.7. Appointment of Directors - In selecting the directors to be appointed to the Board, the Shareholder shall take into account the qualifications identified in the Board Skills Matrix (4.2) and the candidates nominated by the Human Resources, Governance and Nominating Committee.

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To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

- 4.8. Meetings of the Board - If requested by the Shareholder, the Board shall invite certain employees of the City, identified by the Shareholder, to attend meetings of the Board and meetings of the boards of the Non-regulated Subsidiaries. Such City employees shall not be entitled to vote on any matter. A majority of the number of directors required by this Shareholder Declaration constitutes a quorum at any meeting of the Board or meeting of the boards of the Non-regulated Subsidiaries.

5. Financial Policies, Risk Management and Strategic Plan

- 5.1. Policies - The Shareholder expects that the Board will develop and maintain policies consistent with best practices in corporate governance, including:
- 5.1.1. Capital Structure - a prudent financial and capitalization structure for the Corporation and its Subsidiaries consistent with industry norms and sound financial principles, established on the basis that the Corporation and its Subsidiaries are intended to be self-financing entities;
 - 5.1.2. Dividends - a policy relating to enhancing Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and maintaining just and reasonable rates, while providing for dividends to be paid to the Shareholder from the Corporation, as set out in Policy No. F-13, as may be amended from time to time;
 - 5.1.3. Risk Management - oversee the management of all risks related to the business conducted by the Corporation and its Subsidiaries, through the adoption of appropriate risk management strategies and internal controls consistent with industry norms;
 - 5.1.4. Strategic Plan - a long range strategic plan for the Corporation and its Subsidiaries which is consistent with the maintenance of a viable, competitive business and preserves the value of the business for the Shareholder;
 - 5.1.5. Directors' Compensation - to set remuneration levels of board members of the Corporation and its Non-regulated Subsidiaries, using independently researched comparator benchmarks; and
 - 5.1.6. Environmental Policy - a long range environmental policy which provides that the Corporation and its Subsidiaries operate in a safe and environmentally responsible manner.

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To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

5.1.7. Borrowing Policy – in the event that the Corporation or its Subsidiaries require fixed term borrowing in excess of \$100,000 at a time, the Corporation shall obtain quotes from various external lenders. Prior to accepting a quote, the Corporation shall provide a copy of the quote to the Shareholder's CAO and give the Shareholder an option to lend the funds to the Corporation on the same terms and conditions as the external lender's quote. In the event that the Shareholder wishes to exercise its option, it shall inform the CEO of the Corporation in writing within 10 business days, failing which the Corporation shall be free to borrow from the external lender.

6. Decisions of the Shareholder and Shareholder Representatives

- 6.1. The Shareholder hereby designates the Mayor and the City Clerk as the legal representatives of the Shareholder (the "Shareholder Representative") for purposes of communicating to the Board pursuant to Subsection 6.2 any consent or approval required by this Shareholder Declaration or by the OBCA otherwise.
- 6.2. Approvals or decisions of the Shareholder required pursuant to this Shareholder Declaration or the OBCA shall require a resolution or by-law of Council and shall be communicated in writing to the Board and signed by the Shareholder Representative.

7. Meetings and Annual Resolution

- 7.1. The Shareholder shall receive notification of all meetings of the Board of Directors of the Corporation and any Subsidiary and a copy of the agenda for the meeting.
- 7.2. Within six months after the end of each fiscal year of the Corporation
 - 7.2.1. Annual Report to Meeting of Council - the Board shall report to a meeting of Council and the President and CEO of the Corporation shall attend such meeting and provide such information concerning the Corporation and its Subsidiaries as is appropriate.
 - 7.2.2. Annual Resolutions:
 - 7.2.2.1. The Shareholder shall consider candidates for the Board as proposed by the Nominating Committee and the appointment of the auditors of

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To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

the Corporation and receive the audited financial statements of the Corporation for the last completed fiscal year; and

- 7.2.2.2. The Shareholder shall appoint the necessary members of the Board and appoint the auditors for the Corporation and complete such other business as would normally be completed at an annual meeting of shareholder under the OBCA.

8. Reporting on Major Developments

- 8.1. The Board shall from time to time report to Council on major business developments or materially significant or adverse results as the Board, in its discretion, considers appropriate and such report may be received and considered by the Shareholder at an open or in camera meeting of Council.
- 8.2. The Board shall provide to the Shareholder any and all records of the Corporation or the Subsidiaries within a reasonable period of time of the Shareholder's written request for same.

9. Matters Requiring Shareholder Approval

- 9.1. Without Shareholder approval given in accordance with Section 6, the Corporation or any Subsidiary, respectively, shall not:

Statutory Approval Right

- 9.1.1. Change the name of the Corporation or a Subsidiary; add, change or remove any restriction on the business of the Corporation or a Subsidiary; create new classes of shares; or in any other matter amend its articles of incorporation or make, amend or repeal any by-law;
- 9.1.2. Amalgamate with any other corporation(s), other than amalgamations that may under the OBCA, be approved by a resolution of directors;
- 9.1.3. Take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation or a Subsidiary;
- 9.1.4. Apply to continue as a corporation under the laws of another jurisdiction;

Additional Approval Rights

SCHEDULE "A"

To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater Sudbury

- 9.1.5. Issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or a Subsidiary;
- 9.1.6. Redeem or purchase any outstanding shares of the Corporation or a Subsidiary;
- 9.1.7. Take on or assume any financial obligation which would materially increase the debt/equity ratio of the Corporation and its Subsidiaries on a consolidated basis above the ratio of 60/40;
- 9.1.8. Sell assets of the Corporation or a Subsidiary or purchase assets with an aggregate value in excess of 15% of the Consolidated Book Value of all assets of the Corporation and its Subsidiaries;
- 9.1.9. Materially alter the nature of or geographic extent of the business of the Corporation or any of its Subsidiaries in a manner which would have a financial impact equal to or greater than 15% of the consolidated Book Value of all assets of the Corporation and its Subsidiaries;
- 9.1.10. Enter into a joint venture, partnership, strategic alliance or other venture, including ventures in respect of the generation or co-generation of electricity which would require an investment, or which would have a financial impact, equal to or greater than 15% of the consolidated Book Value of all assets of the Corporation and its Subsidiaries.

10. Revisions to this Declaration

- 10.1. The Shareholder shall review this Shareholder Declaration at least every five (5) years.
- 10.2. The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the Shareholder will consult with the Board prior to completing any revision and will promptly provide the Board with copies of such revision.

11. This declaration replaces all earlier versions of the Declaration for the Corporation.

DATED at Sudbury, Ontario the [Insert Date] day of [Insert Date]

CITY OF GREATER SUDBURY

SCHEDULE "A"

**To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater
Sudbury**

BY: _____
Brian Bigger, Mayor

BY: _____
Eric Labelle, Clerk

SCHEDULE "A"

**To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater
Sudbury**

APPENDIX "A"

DEFINITIONS AND INTERPRETATIONS

In this Shareholder Declaration the following defined terms have the meaning set out below:

"Act" means the Electricity Act, 1998 (Ontario);

"Board" means the board of directors of the Corporation;

"Chair" means the chair of the Board;

"City" means the City of Greater Sudbury;

"City Clerk" means the Clerk of the City of Greater Sudbury;

"Consolidated Book Value" of all assets of the Corporation and its Subsidiaries shall be the values reported in the audited consolidated financial statements of the corporation and its subsidiaries at the end of its most recently completed fiscal year;

"Corporation" means Greater Sudbury Utilities Inc. incorporated pursuant to Section 142 of the Act;

"Council" means the City Council of the City of Greater Sudbury;

"Debt" includes all debt obligations owed to third party creditors, but excludes all debt obligations owed to the Shareholder;

"Independent Directors" shall have the meaning set out in Section 4 of this Shareholder Declaration;

"Mayor" means the Mayor of the City of Greater Sudbury;

"Non-regulated Subsidiaries" means any subsidiary of the Corporation, except Greater Sudbury Hydro Inc.;

"OBCA" means the Business Corporations Act (Ontario);

"President and CEO" means the president and chief executive officer of the Corporation;

"Shareholder" means the City of Greater Sudbury;

"Shareholder Declaration" means this shareholder declaration;

"Shareholder Representative" shall have the meaning set out in Subsection 6.1;

"Subsidiaries" means the subsidiary corporations (as defined in the OBCA) of the Corporation;
and

"Vice-Chair" means the vice-chair of the Board.

SCHEDULE "A"

**To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater
Sudbury**



POLICY/PROCEDURES MANUAL

Section:	FINANCE	Approval Date:	2019-09-06
Title:	DIVIDEND POLICY	Supersedes:	2019-05-27
MOTION NO.:	2019-GSUI-IC-08-01	Review Date:	Per Board Work Plan
Policy No.:	F-13	Page No.:	1

PREAMBLE

The Dividend Policy of Greater Sudbury Utilities Inc. (the "Corporation") and its subsidiaries is predicated on the mandate of the Board of Directors (the "Board") to act in and protect the best interests of the Corporation. This mandate, which is a duty derived from statute law, necessarily involves balancing the legitimate interests of the Shareholder (the City of Greater Sudbury), customers, creditors, suppliers, employees, the public, community and environment.

POLICY

1. The Corporation's intention is to increase value returned to the City as Shareholder in all forms, including Dividends. GSU seeks to enhance Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure while maintaining just and reasonable rates to customers. Shareholder value is built both through retaining returns in the Corporation and by distributing returns to the Shareholder including by way of Dividends.
2. On an annual basis, in April each year, the Board of the Corporation may approve a Regular Dividend to be paid to the Shareholder, based on a target range of 25% to 50% of the free cash flow for the year, after net movements in regulatory balance. Any final dividend declaration is at the Board's discretion, taking into account legitimate corporation needs including capital requirements and sustainable electricity supply.
3. The Board will disclose to the Shareholder both the calculation and rationale underpinning any Dividends declared and paid to the Shareholder, and in the event that an annual Regular Dividend is not declared, the Board would report this to the Shareholder at or before the AGM and provide a full report on rationale and projections.
4. The Board may declare and pay a Special Dividend to the Shareholder at any time acting in its discretion, for example when the Corporation is vested with significant surplus funds without reasonable investment opportunities; if the Corporation's debt to equity ratio falls below 60/40 (1.5 times), this would typically trigger a Special Dividend.
5. The Dividend Policy is to be reviewed every four years, beginning in July 2022, reviewed by the Board, and prior to any substantive modification of the Dividend Policy, the Board will meet with the Shareholder to discuss.

