

Request for Decision

GSU Shareholder Declaration Recommendation

Presented To:	City Council
Presented:	Tuesday, Jul 09, 2019
Report Date	Wednesday, Jun 26, 2019
Type:	Managers' Reports

Resolution

THAT the General Manager of Corporate Services be directed to present a by-law adopting the revised shareholder declaration in Appendix A, as outlined in the report entitled "GSU Shareholder Declaration Recommendation" from the General Manager of Corporate Services, presented at City Council on June 25, 2019;

AND THAT the General Manager of Corporate Services work with the CEO of Greater Sudbury Utilities to establish a schedule for the declaration and payment of a dividend in accordance with Schedule A which results in payments commencing in 2020.

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

This report outlines the analysis of a revised Shareholder Declaration with Greater Sudbury Utilities Inc., including a Dividend Policy in response to motion CC2018 - 304.

Financial Implications

There are no financial implications associated with this report.

Signed By

Report Prepared By

Kevin Fowke
General Manager of Corporate Services

Digitally Signed Jun 26, 19

Financial Implications

Jim Lister
Manager of Financial Planning and Budgeting

Digitally Signed Jun 26, 19

Recommended by the Department

Kevin Fowke
General Manager of Corporate Services

Digitally Signed Jun 26, 19

Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer

Digitally Signed Jun 26, 19

Background

Greater Sudbury Utilities Inc. / Services Public du Grand Sudbury Inc. (GSU) was incorporated on October 1st, 2000 and is the parent company for four subsidiary companies: Greater Sudbury Hydro Inc., (GSHI) Agilis Networks, @Home Energy and Convergen. GSHI is one of over 60 Local Distribution Companies (LDCs) in Ontario and each LDC, although regulated by a single body, the Ontario Energy Board (OEB), have engaged in a variety of strategies to suit the needs of communities involved in ownership and operations of the utilities. Many have affiliate or subsidiary companies, many provide returns to their shareholder municipalities and those returns take multiple forms. The City of Greater Sudbury (CGS) is the sole shareholder of GSU.

When GSU was incorporated, the City adopted a shareholder declaration which outlined expectations of the shareholder. The declaration outlined expectations of the shareholder to establish policies in respect of a number of matters, including a dividend policy. The GSU Board adopted a dividend policy on May 27th, 2019 and recommended a set of changes to the shareholder declaration at GSU's Annual General Meeting on June 4th, 2019. These changes were deferred to the City Council meeting of June 25th, 2019 for further consideration consistent with an outstanding City Council motion to make revisions to the shareholder declaration which among other revisions would include the long-outstanding expectation for a dividend policy.

Purpose

This report responds directly to motion CC2018 – 304 (Appendix C) directing that:

1. The Treasurer request from Greater Sudbury Utilities Inc., such documentation as deemed necessary in his sole discretion, including but not limited to unconsolidated financial statements for the Great Sudbury Utilities Inc.'s corporations and subsidiaries as well as any business plans and/or operational reviews related to the past five (5) years; and
2. The General Manager of Corporate Services make such revisions to the Shareholder Declaration as deemed appropriate to the Shareholder in its sole discretion, including but not limited to requiring the Greater Sudbury Utilities Inc. to provide the Shareholder on an annual basis unconsolidated financial statements, business plans, operational reviews, and dividends; and
3. The revised Shareholder Declaration, including a Dividend Policy, be presented to Council no later than June 2019.

Analysis

The Shareholder Declaration with the GSU

What is a Shareholder Declaration?

The purpose of the shareholder declaration is to outline the expectations of the shareholder relating to the principles of governance and other fundamental principles and policies of a corporation. The declaration leaves considerable latitude with the Board of the GSU to manage the business affairs of the Corporation and any of its subsidiaries.

The current shareholder declaration was passed by Council on June 25th, 2008 and took effect on June 1st of that year. It has remained unchanged since that time.

The OEB has provided significant guidance about the governance of OEB rate regulated utilities. The OEB recommends that the quality of governance of an LDC would likely be improved if a majority of directors are independent among other governance recommendations.

The Board is proposing to add two (2) independent directors.

The OEB has, in at least one instance, required that a dividend proposed to be paid out to a shareholder be approved by a majority of a Board's independent directors in addition to being approved by a majority of the entire Board thereby adding an extra level of scrutiny to the amount and timing of any dividend.

In this example, the OEB was concerned because the LDC had historically been paying very large dividends to the shareholder despite the LDC's need for increased capital spending to maintain system reliability. If the LDC continued to pay out such large dividends to its shareholder, the LDC would have had to ignore its aging infrastructure or undertake significant borrowing to address it - the OEB also considered the impact of the continued dividend payment on the LDC's pricing and the adequacy, reliability and quality of service. All of which could adversely impact the LDC's ratepayers.

GSU has never paid a dividend to the City. The OEB's guidance with respect to independent directors is not OEB policy or regulation. In addition to three (3) City Councillors, the GSU Board includes two (2) independent directors selected for their sound judgment, personal integrity, experience and knowledge. In light of the Board's accomplishments to date as set out in its report at its June 4th, 2019 AGM, the Board appears to be performing capably in its current iteration and there is no demonstrable business need to increase the number of directors, independent or otherwise.

What are the proposed changes to the Shareholder Declaration?

The changes to the Shareholder Declaration are minor in nature and reflect CGSs desire for additional financial and strategic planning information from the GSU. Secondly, the Board is requested by the shareholder to adopt the dividend policy contained in Appendix B to the declaration. These changes are reflected in Section 5 in Appendix A.

Dividend Policy

What is a Dividend Policy?

A dividend policy contains the parameters used by a board of directors as the basis for its decisions to declare dividends for payment to investors (or shareholders). The current shareholder declaration with GSU calls for the establishment of "a policy relating to the dividend to be received by the Corporation from the Subsidiaries consistent with a prudent financial and capitalization structure". Council resolution CC 2018-304 calls for a revised shareholder agreement that includes a dividend policy to be presented to the shareholder for approval.

On May 27th, 2019, the GSU board of directors adopted a dividend policy. This policy indicates that the board of directors may approve, on an annual basis, the payment of a dividend to the shareholder on the basis of its normalized comprehensive income (NCI).

Normalized comprehensive income is net income adjusted for the change in value of certain assets, these adjustments result in comprehensive income which is further normalized by adjusting for non-cash items (like depreciation or amortization), permanent cash differences, investing activities and net negative financing activities. It is a proxy to cash generated or used by the business in a given period but does not take into account positive financing activities (like taking out a bank loan or using a line of credit). For 2017 and 2018, NCI was negative (\$1,529,570 and \$631,365 respectively). Given that GSU is entering a period of significant capital investment, some of which may be financed by debt, it very unlikely to be positive in the near term.

The policy also specified that the dividend must be in compliance with the OBCA, the Ontario Energy Board and approved by a majority of independent board members. The provision relating to independence of board members is analyzed above and is unnecessary based on legal opinion received by staff. In fact, the OBCA under which GSU is incorporated, does not address any notion of the affiliation or independence of board members.

Dividend policies generally contain parameters which are used by the board of directors to evaluate a company's financial position and determine if the declaration and payment of a dividend is advisable in the circumstances. Unsurprisingly, boards do not normally declare dividends in situations that would create non-compliance with standards and regulations, would breach contract terms or interfere with other financing arrangements, impair continued reliability, operations or maintenance etc. Further, boards of directors must take into account the organization's ability to pay a dividend in any given period based on having sufficient cash and strong financial indicators.

Subsequent to the direction received in December of 2018, staff have undertaken an analysis of a variety of financial indicators such as income, leverage, free cash flow and liquidity at GSU. These calculations all support strong and improving financial ratios.

Free cash flow and the level of cash and cash equivalents certainly fluctuates and is highly influenced by financing choices to use available cash for purchases of property, plant and equipment. On a consolidated basis, GSU invested \$12,643,752 and \$11,557,261 in cash for purchases in 2018 and 2017 respectively. Analysis of financial indicators is contained in Appendix B.

Interests of the GSU Board

Corporate Services staff have listened to the interests expressed by the GSU Board and senior staff. It is clear that GSU is interested in a policy that:

- Does not place present or future upward pressure on rates
- Considers the potential that despite strong consolidated net income, capital expenditures and the likelihood debt will be required to address capital requirements means that cash will be constrained in the near term
- Is tax effective and considers the relatively high rate of interest on its promissory note with the City.

GSU commissioned BDR North America to perform research into the cash flow, capital structure and dividend policies of Ontario municipally owned electricity distribution companies. The report describes a variety of 2017 data for all of the LDCs in the province reported on the OEB's performance dashboard website. While it is clear in the report that GSU has managed to keep distribution rates low (60th lowest out of 75 LDCs in the study) and they are paying a relatively high rate of interest on shareholder issued debt (third highest total amount of interest and second highest per customer amount of interest in the study), the study also finds that "over the past 10 years, there has been a significant shift to LDCs paying dividends" (40 LDCs in the study paid a dividend in 2017 and only 15 did not). In fact, GSU is the largest LDC in Ontario (in terms of number of customers) that does not pay a dividend. The study also finds that the majority of dividends are in the range of 25% to 60% of net income or between \$20 and \$55 per customer.

When one considers total cash per customer (interest on shareholder issued debt plus dividends) provided to shareholders, it is clear that there are many utilities paying more to their shareholder on a per customer basis than GSU, several of which maintain distribution rates comparable to GSU.

Local Distribution Company	Residential Bill*	Cash/Customer
GSU/GSHI	\$93.63	\$74.47
North Bay Hydro	\$93.71	\$132.17
Oakville Hydro	\$98.86	\$109.52
Festival Hydro	\$96.38	\$106.06
Waterloo North Hydro	\$96.65	\$95.65
Orillia Power Distribution	\$98.19	\$87.32
Halton Hills Hydro	\$97.57	\$83.84
Kitchener Hydro	\$89.24	\$83.26
Niagara on the Lake	\$93.89	\$81.09
Burlington Hydro	\$93.38	\$79.66

* = Includes 750 kwh of consumption, 65% Off-Peak, 17% Mid-Peak and 18% On-Peak using distribution rates from:

https://www.oeb.ca/_html/performance/rates_chart.php

The total cash paid to the shareholder in GSU's case is \$3,795,000. It could be considered to include a deemed portion as a dividend payment if one deducted the prescribed allowed interest rate on shareholder debt by OEB. The difference that could, in theory, be deemed to be a dividend payment is approximately \$1,200,000. When one looks at the dividend per customer ratios among municipalities with 40,000 – 60,000 customers (i.e. similar sized utilities) and controlling for interest rates on shareholder debt paid at the prescribed interest rate, most municipalities our size pay a larger dividend than the “deemed dividend” of \$1,200,000.

Local Distribution Company	Total Customers	Dividend per Customer
GSU/GSHI	47,427	\$0.00
Entegrus	41,142	\$36.46
Bluewater Power Distribution	36,585	\$30.07
Brantford Power	39,622	\$20.19
Milton Hydro	37,896	\$39.58
Newmarket/Tay Hydro	35,712	\$39.20
Niagara Peninsula Hydro	54,919	\$25.49
Oshawa PUC Networks	57,584	\$39.94
Thunder Bay	50,844	\$39.34
Waterloo North Hydro	57,041	\$61.36
Average Dividend Per Customer		\$36.85

At \$36.85, GSU's customer base of 47,427 would, on average, lead to a dividend payment of approximately \$1,750,000, significantly higher than the “deemed dividend” that one could theoretically say is embedded in the current level of interest paid to CGS.

What Dividend Policy Should the GSU Adopt?

The dividend policy adopted by the GSU Board is highly conservative in comparison to virtually all of the policies that formed a part of BDR North America's research and research performed by CGS Finance staff. It is recommended that the dividend policy with GSU should follow the form and content of the vast majority of policies in the municipally owned electrical utility space. These policies have common characteristics:

- They contain a formula for calculation of a dividend based on net income (or some version of consolidated income)
- They are declared and directed by the Board provided a set of negative criteria are avoided
- They are “in favour” of the shareholder: That is, they are worded in such a way that the default is declaration and payment, unless the payment would satisfy one of the negative criteria

The dividend policy adopted by the GSU Board does not contain a formula for calculation, it uses a basis of “normalized comprehensive income”, it indicates that the Board “may” approve a dividend and therefore is not in favour of the shareholder. Further, it contains a provision that only a majority of independent directors approve any dividend. Currently, there are two independent directors, both would have to agree to the declaration and payment of a dividend.

Conclusion of the Analysis section

Most local distribution companies have a dividend policy. Generally, across the Province,

- they pay a percentage amount from 25 – 60%,
- this amount is calculated on net income in line with a set of criteria outlining the circumstances which would give rise to the Board electing not to declare a dividend and,
- are “in favour” of the Shareholder (meaning the policy default is that Board will decide to declare and pay the dividend unless the criteria can be met and reasons for not declaring a dividend are clear to the shareholder).

As above, one of the key interests of the GSU Board is to protect against the potential that the total cash paid to the shareholder impacts distribution rates. The impact of increasing the total amount of cash contributed to the City from GSU in terms of rates is unknown at present. In any event, the distribution rate is a relatively small component of the overall bill paid by consumers, at present, with all of the fixed charges on residential and commercial electrical utility bills, it accounts for less than twenty (20%) of the overall electricity bill. GSU is a corporation under OBCA rules with profitable subsidiaries, it is not a not-for-profit corporation and it has demonstrated financial strength.

GSHI has been able to keep distribution rates low. This is a notable accomplishment and should be credited to them as a sign of efficient operations and a creative mix of energy product offerings that are providing services as well as beneficial rates to their customer base. It is noteworthy however, that several municipalities with similarly low distribution rates are paying dividends and or contributing more total cash to their respective municipal shareholders.

Staff recommend the dividend policy attached to the recommended revised shareholder declaration as Schedule A.

Recommendation

That the General Manager of Corporate Services be directed to present a by-law adopting the revised shareholder declaration in Appendix A.

And that the General Manager of Corporate Services work with the CEO of Greater Sudbury Utilities to establish a schedule for the declaration and payment of a dividend in accordance with Schedule A which results in payments commencing in 2020.

References

Report of the Ontario Energy Board: Best Practices regarding Governance of OEB Rate-Regulated Utilities <https://www.oeb.ca/sites/default/files/report-of-the-board-corporate-governance-20181220.pdf>

https://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20050617_58-201_corp-gov-guidelines.pdf

https://www.oeb.ca/oeb/Documents/EB-2014-0255/KPMG_Report_Corporate_Governance_20150429.pdf

Current Shareholder Declaration

Dividend Policy Adopted by GSU Board on May 27th, 2019

Shareholder Declaration tabled by GSU Board at June 4th, 2019 GSU Annual General Meeting

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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- 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 ~~paragraphs~~ 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, ~~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.

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

- 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 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 ~~seven~~five individuals which shall include three City Directors and ~~four~~two Independent Directors, all appointment by Council.

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:

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

- 4.2.1. Awareness of public policy issues related to the Corporation or a Subsidiary, as applicable;
 - 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 which 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, substantially in the form attached hereto this Shareholder Declaration as Appendix "B";
 - 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

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 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.

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

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.

~~8.1.8.2.~~ 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.

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

- 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;

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

- 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 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

BY: _____
Brian Bigger, Mayor

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

BY: _____
Eric Labelle, Clerk

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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 ~~C~~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;

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

and

SCHEDULE "A"

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

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

SCHEDULE "A"

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

Appendix "B" to Shareholder Declaration

GREATER SUDBURY UTILITIES INC.

DIVIDEND POLICY

Background

Greater Sudbury Utilities Inc./Services Publics du Grand Sudbury Inc. is an investment holding company with its wholly owned subsidiaries involved in the distribution of electricity, provision of broadband telecommunications services and competitive rental & customer support services. Greater Sudbury Utilities Inc. is wholly owned by the City of Greater Sudbury.

Greater Sudbury Utilities Inc. recognizes that the Shareholder should realize economic value from its investment through investment returns that yield dividends and capital appreciation.

Dividend Policy

In addition to special dividends referred to below, the shareholder is eligible to receive annual, non-cumulative dividends with a target Dividend Payment Rate (DPR) of 35% of the Corporation's consolidated income for the year after net movements and regulatory balances - net of tax (net income) under Modified International Financial Reporting Standards. The Corporation will declare and pay regular dividends subject to the Conditions Precedent to the Payment of Dividends set out below.

Conditions Precedent to the Payment of Dividends

Dividends will be paid to the extent that such payment would not otherwise cause:

- a) Non-compliance with applicable laws;
- b) A breach of contract or the immediate or anticipated failure to otherwise meet the terms of financing arrangements;
- c) A material impairment in the operations and maintenance of the assets of the corporation;

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- d) A material impairment in financial prudence including capital investment in energy infrastructure by Greater Sudbury Utilities Inc. (and its subsidiaries) to sustain reliability and an appropriate level of reserves;
- e) A material impairment in the ability to service the debt of Greater Sudbury Utilities Inc. and its subsidiaries.

Payment of Dividends

Regular Dividends

Each year, at its meeting to approve the annual budget for the next financial year, the Board of Directors of Greater Sudbury Utilities Inc. will forecast the annual dividend by applying the DPR to budgeted net income for the next financial year. The dividend will, subject to meeting the conditions precedent for the payment of dividends, be targeted at 35% of net income, declared and paid on or before June 30th (shortly following the approval of the annual financial statements of the preceding year).

Reporting to Shareholder

In the event that the Board of Directors of Greater Sudbury Utilities Inc. does not approve a payment of a regular dividend, the Board will promptly report the circumstances underlying the non-payment to the Shareholder and, thereafter, provide progress reports on a quarterly basis until such time as the payment of regular dividends resumes. Greater Sudbury Utilities is to provide *pro forma* income, cashflow and debt/equity forecasts to support the reasoning for the non-payment of a dividend.

Review of Dividend Policy

The Dividend Policy is to be reviewed every four years with recommendations for improvement from the Board.

Special Dividend

1. Periodic payments to maintain the approved capital structure of the Corporation of a 60 / 40 debt to equity split. Should the approved financial statements in any given year indicate a ratio of less than 60 / 40 debt to equity on a consolidated basis a special

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dividend equaled to the difference in equity that would return the ratio to at least 60/40
would be automatically declared and paid to the shareholder on or before September 1st.

2. The Board may declare and pay a special dividend to the shareholder at any time acting
in its discretion.

Appendix B

The following calculations and comments are based on GSU financial statements for the year ending December 31, 2018.

1. Net Income

The consolidated GSU financial statements include a statement of income and comprehensive income. This includes “income for the year after net movements in regulatory balances – net of tax” Below are the results for the last three years.

GSU (consolidated)	2018	2017	2016	2015
Income for the year after net movements in regulatory balances - net of tax	3,706,741	2,739,732	5,030,158	1,306,282

Note the total comprehensive income was not utilized as this includes fluctuations for future benefit obligations and should be excluded as they are actuarial adjustments and not reflective of the operational income/losses.

2. Debt to Equity

The debt to equity ratio measures a company's financial leverage; it indicates how much debt a company is using to finance its assets relative to the value of shareholders' equity. A high debt to equity ratio generally means that a company has been aggressive in financing its growth with debt. Aggressive leveraging practices are often associated with high levels of risk. In GSU's case, a majority of its debt is owed to CGS, which reduces the normal risk for shareholders with a debt to equity ratio above 2:1.

The debt to equity ratio is calculated by taking total liabilities and dividing it by the shareholders' equity.

GSU (consolidated)	2018	%	2017	%	2016	%	2015	%
Total Debt	94,666,179	67%	96,998,772	70%	99,078,978	71%	106,171,624	78%
Total Equity	47,043,069	33%	42,143,739	30%	40,494,888	29%	30,371,787	22%
Debt to equity ratio	2.01		2.30		2.45		3.50	

3. Cash and Cash Equivalents

Cash and cash equivalents measure a company's liquid assets on hand at the end of a given period and indicate to what extent they have free cash available for operating, investing or financing activities. This number fluctuates greatly at least in part due to financing choices to spend available cash on investments in long term assets.

GSU (consolidated)	2018	2017	2016	2015
Cash and cash equivalents	-1,697,005	2,952,672	459,863	3,875,796

4. Current Ratio

The Current Ratio is calculated to provide an idea of a company's ability to pay back its liabilities. A healthy Current Ratio is greater than one, the higher the ratio the more capable the company is to repay their debt.

GSU (consolidated)	2018	2017	2016	2015
Current Assets	24,420,202	26,439,074	31,886,750	34,139,810
Current Liabilities	13,173,559	15,254,438	19,695,178	21,393,035
Current Ratio	1.85	1.73	1.62	1.60

11-1

City Council Resolutions



Moved By [Signature]

No. CC2018-304

Seconded By [Signature]

Date Tuesday, December 11, 2018

WHEREAS Schedule "A" of By-law 2008-137 adopts the City of Greater Sudbury Shareholder Declaration for Greater Sudbury Utilities Inc. (the "Shareholder Declaration"), which includes an expectation for a Dividend Policy to be presented to the Shareholder for approval;

AND WHEREAS upon the initial incorporation of Greater Sudbury Utilities Inc. the City expected the payment of an annual dividend starting in 2004;

AND WHEREAS the Auditor General, in the report entitled "Governance Audit of Greater Sudbury Utilities Inc. and Greater Sudbury Hydro Inc.", presented at the Audit Committee meeting on November 5, 2018 noted that a Dividend Policy remains outstanding and recommended that a Dividend Policy be formalized for the Shareholder's review and approval and further recommended that the Shareholder Declaration be reviewed and updated as appropriate;

THEREFORE BE IT RESOLVED THAT the Treasurer request from the Greater Sudbury Utilities Inc. such documentation as deemed necessary in his sole discretion, including but not limited to unconsolidated financial statements for the Greater Sudbury Utilities Inc.'s corporations and subsidiaries as well as any business plans and/or operational reviews related to the past five (5) years;

AND BE IT FURTHER RESOLVED THAT the General Manager, Corporate Services make such revisions to the Shareholder Declaration as deemed appropriate to the Shareholder in its sole discretion, including but not limited to requiring the Greater Sudbury Utilities Inc. to provide to the Shareholder on an annual basis unconsolidated financial statements, business plans, operational reviews, and dividends;

AND BE IT FURTHER RESOLVED THAT the revised Shareholder Declaration, including a Dividend Policy, shall be presented to Council no later than June 2019;

CARRIED
 Tuesday, December 11, 2018

[Signature]
 Mayor Bigger, Chair