

## Request for Decision

### GSU Shareholder Declaration Recommendation

Presented To:	City Council
Presented:	Tuesday, Jun 25, 2019
Report Date	Wednesday, Jun 12, 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 Corporation 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 12, 19*

**Financial Implications**

Jim Lister  
Manager of Financial Planning and  
Budgeting  
*Digitally Signed Jun 12, 19*

**Recommended by the Department**

Kevin Fowke  
General Manager of Corporate  
Services  
*Digitally Signed Jun 12, 19*

**Recommended by the C.A.O.**

Ed Archer  
Chief Administrative Officer  
*Digitally Signed Jun 12, 19*

## **Background**

Greater Sudbury Utilities Inc. / Services Public du Grand Sudbury Inc. (GSU) was incorporated on October 1<sup>st</sup>, 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 27<sup>th</sup>, 2019 and recommended a set of changes to the shareholder declaration at GSU's Annual General Meeting on June 4<sup>th</sup>, 2019. These changes were deferred to the City Council meeting of June 25<sup>th</sup>, 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 25<sup>th</sup>, 2008 and took effect on June 1<sup>st</sup> 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 4<sup>th</sup>, 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 27<sup>th</sup>, 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 (60<sup>th</sup> 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.

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

<b>Local Distribution Company</b>	<b>Total Customers</b>	<b>Dividend per Customer</b>
<b>GSU/GSHI</b>	47,427	\$0.00
<b>Entegrus</b>	41,142	\$36.46
<b>Bluewater Power Distribution</b>	36,585	\$30.07
<b>Brantford Power</b>	39,622	\$20.19
<b>Milton Hydro</b>	37,896	\$39.58
<b>Newmarket/Tay Hydro</b>	35,712	\$39.20
<b>Niagara Peninsula Hydro</b>	54,919	\$25.49
<b>Oshawa PUC Networks</b>	57,584	\$39.94
<b>Thunder Bay</b>	50,844	\$39.34
<b>Waterloo North Hydro</b>	57,041	\$61.36
<b>Average Dividend Per Customer</b>		\$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.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](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 27<sup>th</sup>, 2019

Shareholder Declaration tabled by GSU Board at June 4<sup>th</sup>, 2019 GSU Annual General Meeting



**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 Act and as the 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 OEB, the IMO and all other applicable regulatory or governmental authorities.

2.2 As at the date hereof, the Corporation or one or more Subsidiaries may engage in any one 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.

- (a) transmitting or distributing electricity;
- (b) owning and/or operating an electricity generation facility;
- (c) retailing electricity;
- (d) distributing or retailing gas or any other energy products which is carried through pipes or wires to the user;
- (e) business activities that enhance or develop the ability of the Corporation to carry any of the activities described in paragraphs (a), (c) or (d) above;
- (f) 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;
- (g) renting, selling or maintaining equipment and appliances, including without limitation, hot water heaters;
- (h) managing or operating, on behalf of the Shareholder, the provision of a public utility or sewage services; and
- (i) providing services related to improving energy efficiency.

### **3. Standards of Governance**

- 3.1 As required by the OBCA, the Board and the board of directors of any Subsidiary shall supervise the management of the business and affairs of the Corporation and any 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 Subsidiary respectively and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In addition, the Shareholder expects the Board and the boards of directors of the Subsidiaries to observe substantially the same standards of corporate governance as may be established from time to time by the Toronto Stock Exchange, or any other applicable regulatory or governmental authority in Canada for publicly traded corporations with such modifications as may be necessary to reflect the fact that the Corporation and each Subsidiary is not a publicly traded corporation.

#### **4. Board of Directors**

4.1 Number of Directors - The Corporation shall be governed by the Board which shall consist of a minimum of one and a maximum of twenty 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:

- (a) (i) The Board of the Corporation (the “GSUI”), and the boards of the Subsidiaries, Greater Sudbury Hydro Plus Inc., Agilis Networks, 1700211 Ontario Inc. and 1627596 Ontario Inc., shall be comprised of five individuals which shall include the Mayor (or another serving member of Council designated by the Mayor), two other members of Council appointed by Council, and two individuals (“Private

Directors”) who are not City employees or members of Council, appointed by Council.

- (ii) The Board of Greater Sudbury Hydro Inc. shall be comprised of five individuals which shall include the Mayor (or another serving member of Council designated by the Mayor), two other members of Council, and two individuals (“Private Directors”) who are not City employees or members of Council, appointed by Council, and who shall be different from the Private Directors appointed under clause (i) above.

- (b) All Directors shall remain on the Board(s) until their successors are appointed. This provision shall include the Mayor (or designate) and municipal councilors, even if their terms on City Council have terminated.
- (c) The individuals appointed by Council whose term have already expired shall have their terms hereby extended until such time as their successors are appointed by Council. The individuals appointed by Council whose terms have not expired shall continue until expiry and replacement by their successors.

4.2 Qualification of Directors - In addition to sound judgment and personal integrity, the qualifications of candidates for the Board or the board of directors of any Subsidiary may include:

- (a) awareness of public policy issues related to the Corporation or a Subsidiary, as applicable;
- (b) business expertise (including retail experience);

- (c) experience on boards of commercial corporations;
- (d) financial, legal, engineering, accounting and/or marketing experience;
- (e) regulated industry knowledge including, but not limited to, knowledge of municipal electric utilities; and
- (f) 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 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 in the Board's discretion. The Shareholder anticipates that the Board may establish the following committees:

- (a) An Audit and Finance Committee to review financial results.
- (b) A Governance Committee to determine senior management compensation; and
- (c) A Co-ordination Committee made up of members of the Board and members of Council to develop a policy regarding the coordination of activities between the Corporation, its Subsidiaries and the City, and on-going collaboration between the management of the Corporation and the City with respect to the delivery of services and activities in the community and capital programs;

(d) The Board shall establish a Nominating Committee consisting solely of the municipal councillors appointed by Council to the Board and the Mayor (or Mayor's designate appointed to the Board), to identify, evaluate and recommend potential Private Director Board candidates to the Shareholder.

4.6 Role of Nominating Committee - The Shareholder shall consider candidates for the Board and the boards of directors of the Subsidiaries nominated by the nominating committee of the Board (the "Nominating Committee"). It is expected that the Nominating Committee will develop a process which takes into account the qualifications listed in Section 4.2 of this Shareholder Declaration in order to identify and evaluate potential candidates for the Board and candidates for the boards of directors of the Subsidiaries in order to recommend a slate of qualified candidates to the Shareholder.

4.7 Appointment of Directors - In selecting the directors to be appointed to the Board and boards of directors of the Subsidiaries, the Shareholder shall take into account the qualifications listed in Section 4.2 of this Shareholder Declaration and the list of candidates proposed by the Nominating Committee.

4.8 Directors' Compensation - The compensation of the Board and of the boards of directors of the Subsidiaries shall be approved by the Shareholder. Directors compensation will initially be set as follows:

(a) all directors of the Corporation or a subsidiary shall receive \$4,000 per annum except the Mayor, but including the Mayor's designate for long-term replacement;

- (b) any director of the Corporation who is also serving as the Chair of the Corporation or a subsidiary shall receive the additional sum of \$2,000 per annum, for a total compensation of \$6,000 per annum;
- (c) if a director or chair of the Corporation is also a director or chair of one or more Subsidiaries, such director shall not receive any additional compensation for his or her role as director or chair of a Subsidiary except that any director who serves as the Chair of a Subsidiary or the Corporation shall be entitled to receive the additional sum referred to in paragraph 4.8 (b) to a maximum of one \$2,000 payment.
- (d) all directors of GSUI shall also receive a \$200 per diem for attendance at Committee meetings, out-of-town travel, and all other hours spent on utility business (excluding Board meetings), on the basis of a minimum of four hours spent on utility business.

The Shareholder may review the compensation of the Board and of the boards of the Subsidiaries at any time in order to ensure that the level of compensation is appropriate and sufficient to attract directors with necessary qualifications.

- 4.9 Meetings of the Board - If requested by the Shareholder, the Board shall invite certain employees of the City, as requested by the Shareholder, to attend meetings of the Board and meetings of the boards of the 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 Subsidiaries.

## 5. Financial Policies, Risk Management and Strategic Plan

5.1 Policies Requiring Shareholder Approval - The Board shall establish policies in respect of the following matters and present such policies to the Shareholder for its approval:

- (a) Capital Structure - develop and maintain a prudent financial and capitalization structure for the Corporation and its Subsidiaries consistent with industry norms and sound financial principles and established on the basis that the Corporation and its Subsidiaries are intended to be self-financing entities;
- (b) Returns - enhance Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and maintaining just and reasonable rates;
- (c) Dividends - establish a policy relating to the dividend to be received by the Corporation from the Subsidiaries, consistent with a prudent financial and capitalization structure;
- (d) Dividends from Corporation to Shareholder – establish a policy relating to the dividend to be received by the Shareholder from the Corporation, consistent with a prudent financial and capitalization structure, generally in the form attached hereto this Shareholder Declaration as Schedule “B”;  
and
- (e) Coordination Policy - Develop a policy regarding the coordination of activities between the Corporation, its Subsidiaries and the City and on-going collaboration between the management of the Corporation and



the City with respect to the delivery of services, including administrative services, and activities in the community and capital programs.

5.2 Records Policy - The Board shall provide to the Shareholder any and all records of the Corporation or the Subsidiaries within ten (10) business days of the Shareholder's written request.

5.3 Policies Not Requiring Shareholder Approval - The Shareholder expects that the Board will establish policies in respect of the following matters and present such policies to the Shareholder for information purposes only. The Board need not obtain the Shareholder's approval in order to implement these policies:

- (a) Distribution Rates - ensure the establishment of just and reasonable rates for the regulated distribution business of the Corporation, or any of its Subsidiaries;
- (b) Risk Management - manage 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;
- (c) Strategic Plan - develop 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;
- (d) Environmental Policy - develop a long range environmental policy which provides that the Corporation and its Subsidiaries operate in a safe and environmentally responsible manner; and

- (e) Employment Policy -develop an employment policy that ensures compensation, benefits and working condition which are substantially consistent with the workforce of the City of Greater Sudbury.

#### 5.4 Telecommunication Business Development

The Shareholder considers it to be in the interests of the City that a competitive telecommunications service be fostered by the Corporation and its Subsidiaries to service the local community. The Shareholder, therefore, expects that the Board shall develop a policy to foster business development and economic growth in the local telecommunications sector through the development of new competitive telecommunications services, facilities and locating new technology based businesses in the local community.

### **6. Decisions of the Shareholder and Shareholder Representative**

- 6.1 The Shareholder hereby designates the Mayor and the City Clerk as the legal representatives of the Shareholder (the "Shareholder Representative") for the purpose of communicating to the Board pursuant to Subsection 6.2 any consent or approval required by this Shareholder Declaration or by the OBCA or 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:
- (a) 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.
  - (b) Annual Resolutions:
    - (i) 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
    - (ii) the Shareholder, by resolution in writing signed by the Shareholder Representative in accordance with Section 6, 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**

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 reports may be received and considered by the Shareholder at an open or in camera meeting of Council.

## **9. Matters Requiring Shareholder Approval**

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

### Statutory Approval Right

- (a) 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 manner amend its articles of incorporation or make, amend or repeal any by-law;
- (b) amalgamate with any other corporation(s), other than amalgamations that may, under the OBCA, be approved by a resolution of directors;
- (c) take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation or a Subsidiary;
- (d) apply to continue as a corporation under the laws of another jurisdiction;

### Additional Approval Rights

- (e) 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;

- (f) redeem or purchase any outstanding shares of the Corporation or a Subsidiary;
- (g) take on or assume any financial obligation which would increase the Debt/equity ratio of the Corporate and its Subsidiaries on a consolidated basis above the ratio of 60:40;
- (h) sell assets of the Corporation or of 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;
- (i) 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; or
- (j) 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**

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. Replacement**

This Shareholder Declaration replaces all earlier versions of the Shareholder Declaration for the Corporation.

DATED at Sudbury, Ontario the \_\_\_\_ day of June, 2019

CITY OF GREATER SUDBURY

Per:

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Brian Bigger – Mayor

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Eric Labelle- Clerk

**Appendix “A” to Shareholder Declaration**  
**GREATER SUDBURY UTILITIES INC.**  
**DEFINITIONS AND INTERPRETATIONS**

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

“Act” means the *Energy Competition 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;

“IMO” means the Independent Electricity Market Operator;

“Mayor” means the Mayor of the City of Greater Sudbury;

“Mayor’s Designate” shall have the meaning set out in Section 4 of this Shareholder Declaration;

“Nominating Committee” means a committee of the Board for the purpose set out in Subsection 4.6;

“OBCA” means the *Business Corporations Act (Ontario)*;

“OEB” means the Ontario Energy Board;

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

“Private Directors” shall have the meaning set out in Section 4 of this Shareholder Declaration;

“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.



## **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;
- 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 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 1<sup>st</sup>.
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%
<b>Debt to equity ratio</b>	<b>2.01</b>		<b>2.30</b>		<b>2.45</b>		<b>3.50</b>	

### 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
<b>Current Ratio</b>	<b>1.85</b>	<b>1.73</b>	<b>1.62</b>	<b>1.60</b>

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