



PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

Greater Sudbury Hydro Inc. (GSHI)

EB-2024-0026

2025 Rebasing OPEB Deferral Recovery

Submission of the
Vulnerable Energy Consumers Coalition
(VECC)

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Vulnerable Energy Consumers Coalition

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Summary of our position

1. Greater Sudbury Hydro Inc. (GHSI) filed a Cost of Service Application for rates to be effective May 1, 2025. A partial settlement with the intervening parties was reached and subsequently approved by the Board on April 15, 2025. This argument is with respect to the unsettled Deferral account issue:
 - The proposed recovery of \$25,068,558 (originally \$26,089,910) in relation to Account 1508 – Other Regulatory Assets, Sub-Account Other Post-employment benefits (OPEB) Cash to Accrual Transitional Amount, including the length of any disposition period; and
 - The proposed credit of \$6,881,814 (originally \$7,218,181) in relation to disposition of Account 1508 - Other Regulatory Assets, Sub-Account OPEB Actuarial Gains & Losses, including the length of any disposition period.¹
2. GHSI set out three options for addressing the issue of OPEB cash to accrual transitional differences. These are shown in the table below.²

Practical options for calculating the transitional balance

Option	Treatment of pre-2009 cash costs in calculation (pre-OEB data gap)	Treatment of 2009 to transition date cash costs in calculation	Advantages	Considerations / Limitations	Liability Amount Calculated	Calculation Reference
A. Actual-Cash cost for all years ("GSHi method")	Actual cash OPEB payments	Actual cash OPEB payments	<ul style="list-style-type: none"> • Auditable data exist for the entire period. • Directly matches liability build-up. 	<ul style="list-style-type: none"> • Does not mirror the risk-sharing intent of the OEB's embedded-in-rates approach. 	\$19,175,084	Appendix A: Option A. Actual-Cash cost for all years ("GSHi method")
B. Blended Method: Cash pre-2009, Embedded-in-Rates 2009-onward	Actual cash OPEB payments (used as proxy for unavailable data)	Amount embedded in rates	<ul style="list-style-type: none"> • Employs the OEB Staff method wherever reliable "embedded in rates" data exist. • Minimises estimation error before 2009. 	<ul style="list-style-type: none"> • Introduces a timing mismatch for pre-2009 service; some forecasting risk remains with the utility. 	\$20,024,080	Appendix B: Option B. Blended Method: Cash pre-2009, Embedded-in-Rates 2009-onward
C. Embedded-in-Rates for all years ("OEB Staff method")	Not feasible – "embedded in rates" figures unavailable prior to 2009	Amount embedded in rates	<ul style="list-style-type: none"> • Aligns exactly with the OEB Report if full data existed. 	<ul style="list-style-type: none"> • Requires reconstruction of pre-2009 rate filings—an exercise that would be largely speculative, subject to significant error, and potentially infeasible. • GSHi's first actuarial valuation was completed in 2000; reliable data for earlier years do not exist. 	Cannot be fully calculated	Appendix C: C. Embedded-in-Rates for all years ("OEB Staff method")

¹ GHSI revised its proposal in response to interrogatories on the Supplemental Evidence filed subsequent to the Board's interim decision – see Supplemental SEC-31

² Supplemental Evidence IR Staff-2

3. In reality only two options are truly considered by GHSI - A or B. Both options start with the recognition of \$6.49 million of initial liability carried over from the per-2000 time period. GHSI proposes using option A.
4. GHSI updated the proposed debit and credits in response to an interrogatory by SEC which questioned why there were not offsetting entries representing allocations between GSHI and its affiliate GSHPI and to reflect services history provided by GHSI to its affiliates.³
5. GHSI's proposes recovery the net amount of \$18,186,744 from ratepayers over a 10 year period (May 2026 to April 2036) to recover the net impact of GHSI's calculation of actuarial gain and losses due to the change from cash to accrual accounting of OPEB costs. That net amount is composed of a debit to customers of \$25,068,558 for OPEB cash to accrual transition and a credit to customers of \$6,881,814 related to OPEB Actual Gains and Losses accrued since 2020.
6. VECC submits that GHSI has calculated the cash to accrual debit amount incorrectly and does not support the recovery of the \$25,068,558. The amount to be recovered, if any, should be based on a period beginning in 2012 and should not include any initial recognition of amounts prior to 2012. Furthermore, we submit that no amounts accrued due to employees of any affiliate should be included in the calculation.
7. We also agree with Staff that OPEB transition amounts should not include the annual actuarial gain or loss for any period.⁴ VECC does not support the recovery of the proposed credit of \$6,881,814. This amount is unrelated to the issue of the transition to OPEB accrual methodology. The Utility has not demonstrated that the amounts will not be reversed over the coming period.

Submissions

8. VECC is largely in agreement with the principles set out in the arguments of Board Staff. We think their approach to the Utility's proposal is analytically sound. Our argument follows on theirs but we disagree with Staff as to what constitutes the beginning for the calculation of OPEB transitional amounts and to which employees it should apply.
9. As noted by Board Staff the proposal can be separated into three distinct components:

³ Ibid

⁴ Staff AIG, page 8

- the difference between the OPEB cost under the accrual basis and the OPEB cost under the cash basis from 2000 to 2019; and,
 - an initial recognition amount of \$6.49 million at the beginning of the year 2000;
 - the annual net actuarial Gains or losses from 2000 to 2019.
10. As a matter of accounting we agree with Staff that annual actuarial gains or losses do not form part of income. Such balances rise and fall in accordance with a number of factors like discount rates and the demographic of the OPEB beneficiaries. Utilities generally do not recoup or dispose of accrual balances unless a systemic pattern of accrual loss or gain is thought to exist.
11. The germane issue with respect to the other matter - incurred liabilities with respect to the transition from cash to accrual - are more do with the practice of regulation than accounting practice. Notwithstanding the emphasis of the Applicant on the accounting principles (somewhat confused to us at times) the reality of their proposal is for some 48,000 customers to be required to pay over \$18 million for purported liabilities some of which are to have been occurred more than 25 years ago (i.e., the initial pre-2000 amounts of \$6.49 million).
12. While not how it would be recovered, the average payment for every GHSI ratepayer would be in the order of \$375. We ask, only somewhat rhetorically, would the Board or GSHI be content to recover this as a one-time charge? Would they be able to explain its merit to the certain outcry it would cause? Spreading a charge over an extended time to minimize its impact is not justification – it's obfuscation.
13. If the Board considers approving this proposal then we hold it should be prepared to address fundamental questions which would surely be asked by an informed Sudbury ratepayer.
- Can the OEB approve the recovery of costs which were to occurred prior to it having regulatory jurisdiction over the Utility or a predecessor utility?
 - Can costs of (unregistered) pension benefits for persons not actually employed by the Utility become costs for the Utility's ratepayers?
 - Can costs which are purported to have occurred during the period of a legislated rate freeze period now be collected from ratepayers?
 - Is GHSI uniquely positioned as compared to other Ontario electricity distributors as to be requiring its ratepayers to pay OPEB accounting costs which equal the Utility's entire annual operating and maintenance budget?

We suggest the answer to the first three of these questions is – No. We do not know the answer to the last question. We are not aware of any electric distributor seeking such a large amount for this type of accounting change. We do think it important for the Board to understand what precedent it is setting.

The pre-2000 period

14. Prior to 1999 Ontario's electricity distributors were regulated by a unit within Ontario Hydro (the precursor to Hydro One, OPG and the IESO). The restructuring of the electricity sector in Ontario began with the corporatization of over 300 municipally integrated electricity departments or commissions. These newly minted municipally owned electricity companies created new books of account which would become the basis for regulation by the Ontario Energy Board. Ontario Hydro transferred over its basis for setting rates through the Municipal Utility Information System, known as MUDBANK, which contained financial and other records for setting the rates of the former electricity commissions by Ontario Hydro.
15. In order to succeed in transferring a financial liability from one regulatory era to the next two things needed to have occurred. The first is that the newly minted corporation would need to show the transfer of the OPEB liability as a transition cost from the prior municipal utility department or commission to the new corporate structure. We put this precise question to the Utility noting the Board's findings in EB-1999-0034 which in part state:

3.3.32 The Board concludes that transitional costs should be classified into two categories. The first category is costs related to corporate reorganization and to the transfer by-law whereby the municipal corporation acquires the assets of the municipal electric utility. The second is costs related to the business reengineering of the incorporated distribution company to conform to the new business orientation and requirements of a "wires only" company.

In their response to this question at VECC-51 Supplemental the Utility refers to the proceeding RP-2000-00255. We can find no reference in that response or the material provided from that proceeding which supports the transfer of \$6.49 million in OPEB liabilities to the new corporation.

16. The second factor to be demonstrated as to whether an ongoing liability should be recognized is whether it existed in the previous regulator's MUDBANK records. That would require the Board or GHSI through the Board to show the continuity of regulatory OPEB liabilities. No such evidence has been provided which would support the calculated liability from the regulatory records available from the Board.
17. We also asked that GHSI show the continuity of the OPEB liability on the newly minted books of account. At VECC-52 and SEC-29 Supplemental Interrogatories GHSI provides two separate and completely different financial filings. There is, indeed an accrued liability of \$6,491 (presumed thousands) as "Accrued benefit liability recognized in the balance sheet at January 1, 2000" of \$6,491 on the closing statements of October 31, 2000 of the books of the former Sudbury-Hydro-Electric Commission. That is, it refers to the closing book of the predecessor utility commission of Sudbury proper. There is also this note:

In order to meet the requirements of the EA, the Transition Board enacted a transfer by-law, dated October 16, 2000 and effective November 1, 2000, under which the Predecessor Municipalities and their respective hydro-electric commissions (the "Commissions") transferred the book value of certain of the assets and liabilities and employees associated with the distribution of electricity and related activities to the new corporation. (emphasis added).

That is, it is not clear that all liabilities were transferred. We know that most employees were in fact not transferred to GHSI but rather to a service affiliate company known as Greater Sudbury Hydro Plus Inc. (GHSPI).

18. Also, at SEC-29 are the December 31, 2000 opening book of the newly minted Greater Sudbury Hydro Inc. That new corporation, in addition to transfer of the former utility commission to a new corporation also assumed transitions from a number of other "hydro commissions" that were gathered under the "*City of Greater Sudbury Act 1999*".⁵ What cannot be found in the opening books is the corresponding continuity of the liability of \$6.49 million.
19. That statement contains current liabilities to the likes of OPG for power costs and promissory notes. It also shows contingent liabilities related to late payment charges (often referred to colloquially as the "Garland Case" for late payment charges). Yet it shows no related type of OPEB liability. In sum the liability shown on the older electricity commission was not transferred to the newly minted distribution company.
20. Greater Sudbury Hydro Inc was incorporated under the *Ontario Business Corporations Act* on October 01, 2000. Greater Sudbury Hydro Inc. was the successor company to the former Hydro Commissions of the City of Sudbury, Town of Capreol and the Town of Nickel Centre (Coniston only). Subsequent to incorporation, Greater Sudbury Hydro Inc. purchased Falconbridge Nickel Mines distribution assets in 2003. Additionally, Greater Sudbury purchased the distribution system owned by the Municipality of West Nipissing in 2005 and was granted leave to amalgamate those assets with Greater Sudbury's assets on April 2, 2007. The West Nipissing assets provide services to ratepayers in the former towns of Sturgeon Falls and Cache Bay. (EB-2012-0126 Exhibit 1, Tab 1, Schedule 9, page 1). It is not clear to us whether any of the claimed OPEB liabilities are purported to come from these amalgamated utilities. If so then GHSI would need to demonstrate that in the purchase or transfer any such liabilities were explicitly transferred or whether they were extinguished as part of the transactions.
21. In our submission GHSI was never the owner of any pre-2000 OPEB. Nor is the owner of any other employment related liabilities subsequent to when it actually began to employ the staff related to those benefits. Therefore, it cannot today claim

⁵ See SEC-29, *Financial Statements of Greater Sudbury – Two months ended December 31, 2000* (PDF pg. 122)

a historical liability of \$6.49 million to be paid by its ratepayers. This would be wrong factually and as a matter of law.

22. Finally, we would point out that at the time of transition the newly regulated OEB electricity distributors were provided explicit instruction to identify transition costs.

“The approved accounting order for Greater Sudbury Hydro’s OPEB Transitional Amount, filed in EB-2019-0037, stated that the transitional balance will be determined by comparing the embedded-in-rates amounts (typically on a cash basis) to the amounts Greater Sudbury Hydro would have recovered if it had used the accrual method “since the beginning of time.” In its current application, Greater Sudbury Hydro has proposed to calculate its transitional balance over the period from 2000 to 2019, covering the period from its corporatization to the 2020 transition to accrual accounting.”⁶

23. One would expect, had GHSI followed these instructions – then an account would have been established at the time of transition and \$6.49 million booked into it. That did not occur. Again, we find no evidence that any OPEB liability identified as a transition cost from the prior 2000 corporate structure and regulatory regime.

Who is liable for OPEB liabilities?

24. We think it an interesting that the OPEB liabilities which are being claimed by GHSI today were shown on the pre-corporatized utility but not on the financial records of the newly corporatized utility. The answer to that quandary, we think, is that any employment related liabilities would – somewhat obviously - follow the employees.

25. GHSI’s parent company chose to structure the Utility as “virtual utility.” Under this structure virtually all employees (with the exception of some employees responsible for DSM) were employed by an affiliate company. One can assume that the affiliate company assumed all the personnel liabilities related to not just the former electricity commission in the City of Sudbury, but also for the employees of the seven former utility commissions in the surrounding area included by the amalgamation legislation. As such audited statements could not recognize the liabilities on the balance sheet of the regulated utility of GHSI. We find it noteworthy that in the newly minted virtual utility corporation contains this statement:

“The Company has offered a voluntary exit package to certain employees which opened January 8, 2001 and closed January 19, 2001. The total cost of

⁶ Response to Interrogatory Supplemental Evidence Response Staff-5

the voluntary exit package is estimated at \$1,215,000 and is not reflected in these financial statements.”⁷

26. That is, employee related liabilities are noted as being “off the books” of this new corporation. No mention is made of OPEB liabilities.
27. In its decision in EB-2008-0230 the Board directed GHSI to undertake a study of all shared services, and the cost allocation method that would be most appropriate for transfer pricing. In the subsequent cost of service proceeding, EB-2012-0126, filed such a study which was dated October 31, 2012. That study includes the following statement:⁸

At the time of commencement of the study, Greater Sudbury’s staffing consisted only of four employees in the conservation/demand management (“CDM”) function. All other activities of Greater Sudbury were carried out by the Plus Company, with the costs allocated to Greater Sudbury. The Plus Company’s sole business is to provide services to Greater Sudbury and its affiliates, including water billing services to the City. The arrangement is intended to create economies of scope and scale through the sharing of human and other resources. The costs incurred by the Plus Company are recovered through charges made by the Plus Company to the affiliates, including Greater Sudbury. Effective January 1, 2012, the employees in Distribution Electrical Systems (“DES”), the department carrying out system planning, operations and maintenance, and garage services, were transferred from the Plus Company to Greater Sudbury. As a result of that reorganization, Greater Sudbury now self-supplies in respect of the DES functions. Both before and after this reorganization, work of the DES employees was entirely on behalf of Greater Sudbury, except for a small component of the total effort of the department, which involves providing street lighting services to the City under an agreement between the City and the Plus Company.

We could find no reference to OPEB liabilities as being a liability of GHSI in the filed cost allocation study.

28. In our view the record is clear until 2012 all employees from which any OPEB liability might arise were not employees of the regulated utility. Rather the regulated utility acquired its labour services through a contract arrangement. That contractor happened to be an affiliate. We can find no evidence that the pricing of the contract between this affiliate and the regulated utility included ongoing liabilities for staff employed by the affiliate. We do know that a detailed study of the affiliate relationship was ordered by the Board, was completed and that it made no mention

⁷ SEC-29 Supplemental , Financial Statements of Greater Sudbury – Two months ended December 31, 2000, page 11

⁸ EB-2012-0126, Exhibit 1, Tab 1, Schedule 11, Attachment 1

of the regulated utility being exposed to long-term pension related liabilities from its affiliate contractors.

29. GHSI freely choose a form of operation – the virtual utility – which VECC has often objected to as being obtuse and open to financial manipulation. Utilities who have chosen this structure are apt to explain its virtues in lowering costs to the Utility – though we think it more likely lowers costs to the related companies. In any event in making this corporate structure choice GHSI (and its parent) took on any associated risk – including unknown risks.
30. We ask the Board (and GHSI) to consider what the response would be if any other third-party contractor would approach the Utility seeking to be compensating for pension benefits for work past done.
31. For the post 2012 period GHSI should only be allowed to estimate the difference between OPEB on an accrued basis and OPEB on a cash basis for those staff actually employed by GHSI. To be clear we reject GHSI's approach of allocating any liabilities from any affiliate of GHSI. For this to occur GHSI would need to show that it had contracted with that affiliate in a manner that included agreeing to assume any future pension liabilities (and presumably benefits).
32. The purpose of the Affiliate Relationship Code is to ensure that the regulated utility treats an affiliate as it would any other third party contractor. That the utility pays either the competitive market price or if that is not available then the fully allocated costs of that service. Full allocation means allocation of all the costs. All the costs include pension related costs as they can be best estimated at the time of contracting for the service. An affiliate relation cannot be used to pass out of period costs to the regulated utility. If the affiliate encounters out of period cost then presumably it would increase its charges in the next period to recoup any losses. And we might expect GSHPi to attempt to increase the rate it charges to GSHI in order to recover OPEB payments related to former employees who performed work for the utility. If GSHI sought to recover these increased charges in rates we would certainly object. But that is a matter for another day.
33. The Board does not regulate a utility's affiliates. It only regulates the relationship of the regulated utility with an affiliate. That means that any beneficial windfalls or, financial shortfalls of the affiliate are beyond any remedy of the Board. Simply put it is not the Board's place to make the affiliate whole in any way.

Liabilities incurred during the rate freeze period

34. In 2006, the Board announced the establishment of a multi-year electricity distribution rate-setting plan for the years 2007-2010. On January 30, 2008, the

Board indicated that Greater Sudbury would be one of the electricity distributors to have its rates rebased for the 2009 rate year. Accordingly, Greater Sudbury filed a cost of service application based on 2009 as the forward test year. That was EB-2008-0230. At that time Greater Sudbury's evidence was that most of GHSP's costs were directly attributable, and were in support of, the operation of the regulated utility. Depending on the service provided, between 90 to 97.5% of these shared costs from the Plus Company were ultimately charged to Greater Sudbury prior to 2012

35. As a practical matter when the OEB inherited the regulation of the over 300 municipal utilities it was impossible to set rates for each based on a cost of service basis. Instead, the Board applied rate adjustment system on the newly unbundled distribution rates. However, in 2002, the Ontario government introduced the *Electricity Pricing, Conservation and Supply Act, 2002* which capped the price of electricity effective May 1, 2002. This freeze on distribution electricity existed until May 1, 2006.
36. In our submission it would be incorrect to allow any distribution utility to recoup any costs – including any accrual of liability – that accrued during the rate freeze period. To do otherwise would be to frustrate the intent of the legislation. Therefore. In our submission it is wrong (and potentially illegal) to recover any incremental costs that arose during the period of the rate freeze. As such, in any event any calculation of costs related to cash/accrual transition cannot begin to be calculated for May 1 2006.

Concluding Submissions

37. The accounting order which gives rise to the transition balances being sought reads in part:⁹

*GSHi previously recovered OPEBs on a cash basis. GSHi has transitioned to recover OPEBs on an accrual basis in the cost of service rate application for 2020 rates (EB-2019-0037). When transitioning between the cash and accrual method of accounting for OPEBs, the "Report of the Ontario Energy Board – Regulatory Treatment of Pension and Other Post-employment Benefits (OPEBs) Costs" dated September 14, 2017 speaks to calculating the amount that a regulated utility has already recovered from customers with regards to OPEBs in the rates charged to date, compared to what would have been collected in the rates had the newly approved method **been in place since the beginning**. This new account shall record the difference determined in performing the above calculation. GSHi will perform the above calculation before its next cost of service rate application (emphasis added)*

The accounting order begins May 7, 2020.

⁹ EB-2019-0037, Decision and Rate Order May 7, 2020, Schedule C

38. The question arises in this proceeding as to what is “the beginning” or the starting point for the OPEB cost differences between cash and accrual? In our submission the beginning is no earlier than May 2012 and should apply only for those employees who were actually employees of the regulated utility in that and each of the following years until 2020.
39. We agree with Board Staff that the cash vs. accrual difference for OPEB should be calculated the same as the first component of Option C. But unlike staff we believe the period over which that calculation should be done is 2012 to 2019. And it should be done on the basis of the impact of only staff directly employed in each of those years by GHSI. It should exclude any and all impacts of employees of any other company including any affiliate company of GHSI.

Treatment of Actuarial Gains and Loses

40. VECC submits that the OEB should not approve the disposition of any actuarial gains or losses. Whether recorded in the Transitional DA or the Gains and Losses DA. Actuarial gains and losses arise from changes in the assumptions used to calculate OPEB liabilities. Since these assumptions can vary significantly from year to year, the resulting amounts can be either a credit or a debit, and often reverse over time.

Period for recovery

41. The period over which any debit (or credit) should be recovered is largely dependent of the proportional magnitude of the event. We do not know the sums that would be requested for collection under our proposed changes to the methodologies. We do, however, believe that any period longer than 5 years is generally inappropriate for any deferral or variance collection. These are invariably out of period costs. Prolonging periods simply aggravate the intergenerational inequities that arise. We are generally sceptical of arguments for lengthening recovery period based on considerations of affordability as on examination these proposals often appear to us as being calculated mostly to minimize the outrage of ratepayers and the accountability that may bring.

These are our submissions

VECC submits that it has acted responsibly and efficiently during this proceeding and requests that it be allowed to recover 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED