



BY EMAIL and RESS

Mark Rubenstein
mark@shepherd rubenstein.com
Dir. 647-483-0113

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

July 18, 2025
Our File: EB20240026

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2024-0026 – Greater Sudbury Hydro Inc. – SEC Submissions

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 4, these are SEC’s submissions on the unsettled issue in the Greater Sudbury Hydro Inc.’s (“GSHI”) 2025 rates application, the proposed disposition of two DVAs related to other post-employment benefits (“OPEB”). GSHI seeks approval to: i) dispose and collect from customers, \$25,068,558 recorded in its OPEB Cash to Accrual Transitional Amount Deferral Account (“Transitional DA”), and ii) dispose and credit customers \$6,881,814 recorded in its OPEB Actuarial Gains & Losses Deferral Account (“Gains and Losses DA”).

In total, GSHI proposes a net collection from customers of \$18,186,744 over a 10-year period. This represents a very significant amount proposed to be recovered from ratepayers, even over the extended period.

SEC does not support the proposed disposition. SEC submits there are a number of issues which, when considered collectively, warrant a material reduction in the recoverable amount. These include:

- **Pre-2006.** The OEB should, at a minimum, reduce the recovery of the transitional amount recorded before 2006. GSHI has not provided sufficient supporting information. Further, between 2000 and 2006, rate increases were limited, including through a legislative rate freeze. During that time, distributors were not intended to be made whole. Allowing GSHI to recover transitional amounts for this period would result in after-the-fact overcompensation, contrary to the policy intent at the time. As for amounts initially recognized in 2000, the same issues apply, with even less supporting evidence regarding their underlying basis.
- **2006 to 2008.** The OEB should not allow recovery of a transitional amount from 2006 to 2008, as GSHI has not provided the requested supporting information about OPEB costs embedded in base rates.
- **Affiliate Providing Services to GSHI.** There are significant legal and policy issues with the proposal to allow recovery of a transitional amount related to employees who were employed by an affiliate rather than by GSHI.

- **Treatment of Actuarial Gains and Losses.** SEC submits that actuarial gains and losses, whether included in the Transitional DA or the Gains and Losses DA, should not be disposed of at this time.

The disposition period should also be extended to 12 years, to better align with the period over which OPEB benefits will be paid, and to moderate impacts on current ratepayers.

SEC recognizes that consideration of these issues is complex, involving both accounting, legal and policy questions. The proper outcome requires a balance to ensure that rates that arise from the disposition of the accounts at issue are just and reasonable.

Background

Prior to 2020, GSHI recovered OPEB costs on a cash basis. It changed its accounting treatment in light of the OEB's 2017 report on the *Regulatory Treatment of Pension and Other Post-Employment Benefits (OPEBs) Costs* ("Pension and OPEB Report"), which established that the default method for OPEB recovery should be on an accrual basis.¹ As part of its 2020 rebasing application, GSHI proposed to establish a deferral account to capture the transitional amount from switching from cash to accrual, along with a separate account to track actuarial gains and losses going forward.² The approved EB-2019-0037 Settlement Proposal included accounting orders for the creation of these two accounts.³

Neither the Transitional DA or the Gains and Losses DA, as well as the terms of the approved Settlement Proposal, provide GSHI with any guaranteed right to disposition. The accounting orders provide flexibility to allow for proper review in this application, consistent with the Pension and OPEB Report.⁴ At the time of settlement, GSHI had not yet completed the necessary analysis or calculations, and intervenors were not in a position to do more than agree to the creation of the accounts, with disposition to be determined later when sufficient information was available.

Transitional DA

The transitional amount is intended to reflect the difference between the cost of OPEBs that would have been recovered under accrual accounting and the amounts actually recovered using the cash method. Under the accrual method, OPEB costs are recognized as they are earned, rather than when they are paid.

Pre-2006. GSHI seeks recovery of \$9,343,491 in transitional OPEB amounts from before 2006 (pre-tax and pre-any affiliate allocation⁵). This can be divided into two parts: (i) \$6,491,000 initially recognized on GSHI's first financial statements relating to pre-November 2000 OPEB liabilities, and (ii) \$2,852,491 related to the period from November 2000 to 2005.⁶

¹ [Report of the Ontario Energy Board: Regulatory Treatment of Pension and Other Post-employment Benefits \(OPEBs\) Costs \(May 18, 2017\)](#) ["Pension and OPEB Report"], p.1,9

² [EB-2019-0037 Pre-Settlement Conference CQ 4-Staff-103](#); [EB-2019-0037, 4-Staff-66](#)

³ [Decision and Order \(EB-2019-0037\), May 7, 2020, Schedule C](#)

⁴ [Pension and OPEB Report](#), p.1,9

⁵ As detailed in Interrogatory Response SEC-31g, as part of the interrogatory responses GSHI has reduced the proposed balance in both the Transitional DA and Gains and Losses DA to account for allocation of costs related to work GSHI did for affiliates.

⁶ See Supplementary Evidence, Appendix A

SEC submits that the OEB should, at a minimum, materially reduce the recovery of these amounts for several reasons.

First, GSHI's evidence regarding the pre-2006 transition amounts is both insufficient and inconsistent with the express terms of the Transitional DA. The account, which references the Pension and OPEB Report, requires a utility to record "the amount that a regulated utility has already recovered from customers with regard 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."⁷ GSHI has admitted that it does not have the necessary data to perform this calculation for periods prior to 2008, and instead assumes that the amounts paid in cash equate to the amounts recovered in rates.⁸

SEC recognizes that to be consistent, for the purposes of the calculation, the OPEB transition amount should be based on a calculation that includes what was actually included in base rates, adjusted annually as appropriate, for all years including up to 2019. This results in a slightly higher debit amount for the period from 2009 to 2019.⁹

Second, this evidentiary gap is even more problematic with respect to amounts accrued before November 2000. The only evidence provided is a single figure from the 2000 financial statements of the former municipal utility (Sudbury Hydro-Electric Commission).¹⁰ There are no details on how the amount was calculated, what years it covers, or whether previously recovered amounts were excluded. SEC submits that given the lack of evidentiary support and the context of the applicable rate-setting framework, the OEB should disallow recovery of the pre-2006 transitional amounts.

The Pension and OPEB Report emphasizes the importance of properly accounting for previously recovered amounts to ensure that ratepayers are not subject to a "windfall" recovery, effectively paying twice for the same costs.¹¹ SEC recognizes that some of the records may no longer exist considering its some 20 years or more later, but the legal onus is on GSHI.¹²

Third, the rate-setting regime in effect from 2000 to the beginning of 2006 was not intended to ensure full cost recovery. Rates were frozen between 2002 and 2006 under the *Electricity Pricing, Conservation and Supply Act, 2002*, and subject to tight constraints before that. Distributors were not intended to be made whole, and allowing GSHI to recover costs from this period would create a form of retroactive true-up, contrary intent of the legislative rate freeze.¹³

GSHI supports its proposed approach by pointing to what was approved as part of the Settlement Proposal in Enbridge Gas's 2013 rates case (EB-2011-0354).¹⁴ Aside from the fact that it was a settlement, a key distinction between Enbridge and GSHI is that Enbridge had been regulated by the OEB on a continuous basis for over half a century, without any legislated rate freezes. In contrast, GSHI's first true cost of service application was for 2019 rates.

⁷ [*Decision and Order \(EB-2019-0037\), May 7, 2020, Schedule C*](#), p.2

⁸ See Supplementary Evidence, p.14

⁹ See Supplementary Evidence, Appendix B

¹⁰ Interrogatory Response SEC-29

¹¹ [*Pension and OPEB Report*](#), p.9

¹² [*Ontario Energy Board Act*](#), section 78(8)

¹³ See [*Electricity Pricing, Conservation and Supply Act, 2002*](#); Supplementary Evidence, p.13

¹⁴ See Supplementary Evidence, Appendix E

2006-2008. GSHI seeks recovery of \$7,970,572 (pre-tax and pre-affiliate allocation) for transitional OPEB amounts related to the 2006 to 2008 period.¹⁵ Similar to pre-2006 amounts, GSHI has not provided sufficient information consistent with the requirements of the Transitional DA accounting order. In addition, while the formal rate freeze ended in 2006, GSHI's rates during this period were set using 2nd Generation IRM, which relied on rates frozen prior to 2006 and adjusted by a simple price cap index. This methodology was not intended to reflect actual utility costs, including those associated with OPEBs. The company filed its first cost of service application for 2009 rates. Given the continued reliance on adjustment to base rates, that were not meant to recover all the GSHI's costs, and the absence of any detailed evidence showing what OPEB costs were included, SEC submits that the OEB should not permit recovery of any amounts related to this period.

Affiliate Services. GSHI has recorded \$3,066,706 (pre-tax) in the Transitional DA as an allocation related to its affiliate, Greater Sudbury Hydro Plus Inc. ("GSHPI"). GSHPI provides corporate services to Greater Sudbury Utilities affiliates, including GSHI. The allocation is based on the percentage of employees at the time of the two actuarial valuations, one in 2018 and another in 2019.¹⁶

SEC does not believe that this allocation of any portion of the transitional amount with respect of an affiliate company, even if the amount relates to work historically performed for the utility, should be recorded in the Transitional DA. The rationale behind a transitional amount is to address the fact that a regulated utility's past rates did not recover certain obligations. These obligations will now be recovered differently going forward. GSHPI's OPEB obligations are its own legal responsibility, not GSHI's. To allow GSHI to collect, to transfer a different entity related to obligations it will have on its financial books related to past costs, would be impermissible retroactive ratemaking and contrary to the standalone principal.

GSHI has not pointed to any provision in its shared services agreement, or elsewhere, that makes it legally responsible for GSHPI's OPEB obligations. The *Affiliate Relationships Code* ("ARC"), which governs transfer pricing between affiliates, is intended to ensure not only fair allocation of costs, but also to prevent preferential treatment.¹⁷ If GSHPI were an arm's length service provider, there would be no argument that GSHI could recover amounts related to that third party's *historic* OPEB obligations arising from historic work completed and originally paid for in some cases decades earlier, absent a contractual provision. In fact, it would raise retroactive ratemaking concerns.

This issue is further complicated by two factors. First, until 2016, GSHI recorded the entire OPEB obligation for both itself and GSHPI as a single, combined amount. There was no separation of the respective obligations, making it difficult to accurately calculate the portion attributable to GSHPI.¹⁸ Second, until at least 2008, GSHI operated as a virtual utility, with only two employees directly employed by GSHI. All other work was performed by GSHPI employees. If the intent of the Transitional DA is to capture the difference between accrued and recovered amounts, the reality is that, prior to 2008, the obligations would have almost all have been properly those of GSHPI.¹⁹

¹⁵ See Supplementary Evidence, Appendix A

¹⁶ Exhibit 9-1-1, p.12

¹⁷ [Affiliate Relationships Code for Electricity Distributors and Transmitters](#), p.2

¹⁸ Interrogatory Response SEC-31d

¹⁹ EB-2008-0230, Response to VECC IR #2(c)(d)

Notwithstanding the above, SEC acknowledges the practical implications. If the OEB denies recovery of transitional amounts allocated to an affiliate, GSHPi may increase the burden rate it charges to GSHI in order to recover OPEB payments related to former employees who performed work for the utility. GSHI would, in turn, likely seek to recover those increased charges from ratepayers over a comparable time period and in a similar amount. Furthermore, SEC recognizes that consistent with ARC, GSHPi charged GSHI based on a fully-allocated basis.²⁰

However, this potential outcome does not alter the underlying legal distinction between the obligations of a regulated utility and those of its affiliates. While the financial impact on ratepayers may be similar in this instance that may not be the case in a different situation involving a different utility. The OEB should ensure that this does not become a precedent that permits utilities to recover affiliate liabilities in contravention of established regulatory principles.

Treatment of Actuarial Gains and Losses

SEC submits that the OEB should not approve the disposition of any actuarial gains or losses at this time, 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. Unless there is clear evidence that customers have been systematically over or under-recovered, SEC believes the OEB should not approve the disposition of actuarial gains or losses. This is consistent with the Pension and OPEB Report, which addresses disposition in the context of balances that do not offset over time.²¹

There are three different components of the actuarial gains and losses that GSHI seeks to recover (pre-tax and pre-affiliate allocation). First, there is a \$5,305,368 net gain included in the Gains and Losses DA related to post-2019 OPEB actuarial gains and losses.²² Second, there is a \$2,407,049 actuarial net loss included in the Transitional DA related to actuarial gains and losses between November 2000 and the end of 2019.²³ Third, there is almost certainly some portion of the \$6,491,000 initial recognition amount that relates to either a net gain or loss for the period before November, 2000.²⁴

SEC submits that none of these categories of actuarial gains or losses should be disposed of. The final category, related to the initial recognition amount, cannot be identified or broken down further. As discussed earlier, SEC believes that the OEB should not allow disposition of any amount related to that period. For any period of recovery that the OEB does approve in the Transitional DA, the corresponding actuarial gains or losses should be transferred to the Gains and Losses DA for ongoing monitoring.

GSHI appears to support the Gains and Losses DA at this time primarily as a means to reduce the significant balance it seeks to dispose of in the Transitional DA. SEC submits that, given the concerns raised about the Transitional DA balances, any approved disposition would likely be reduced.

²⁰ Interrogatory Response SEC-31e

²¹ [Pension and OPEB Report](#), p.13

²² Exhibit 9-1-1, p.14; See GSHI_OPEB_Appendicies_20250613, Tab 'Gain Loss'

²³ See Supplementary Evidence, Appendix A

²⁴ See Supplementary Evidence, Appendix A



The OEB should further require GSHI to monitor the balance of the Gains and Losses DA. If the balance continues to grow, as it has in recent years, GSHI should be required to provide a detailed explanation of the causes in its next cost of service application. This would allow the OEB to consider future disposition if there is evidence of a systemic issue over a 10-year period.

Disposition Period

The OEB should extend the disposition period to 12 years. This would help mitigate the rate impact on current ratepayers and better align cost recovery with the period over which the associated OPEB benefits will be paid. At the time of the transition on December 31, 2019, the weighted average duration of OPEB benefit payments was approximately 18 years.²⁵ A 12-year recovery period (18 years minus approximately 6 years between December 31, 2019 and the proposed May 2026 start date) would ensure that costs are allocated over a time frame that closely matches the expected benefit payment horizon, while avoiding undue burden on current ratepayers.

GSHI argues that recovering amounts over a period longer than 10 years raises concerns about intergenerational equity. However, under GSHI's own proposal, it seeks to recover transitional amounts related to OPEB liabilities accrued prior to the year 2000. Intergenerational equity is therefore already a significant concern. Recovering the amount over a period that reflects the expected duration of OPEB benefit payments for service rendered up to the end of 2019, when the transition occurred, is more consistent with the prior cash-based approach. It creates a principled connection between the nature of the obligation and the proposed disposition period.

Summary

SEC submits that GSHI has not provided sufficient evidentiary support to justify recovery of the full amounts recorded in its OPEB-related deferral accounts, particularly with respect to pre-2006 transitional balances and amounts related to affiliate employees. Additionally, SEC does not believe that any of the actuarial gains and losses should be disposed at this time. SEC therefore recommends that the OEB reduce the proposed recoverable amount and separately consider a 12-year disposition period.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and intervenors (by email)

²⁵ Interrogatory Response SEC-32b