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October 30, 2025 **VIA E-MAIL**

Ritchie Murray
Acting Registrar (registrar@oeb.ca)
Ontario Energy Board
Toronto, ON

Dear Mr. Murray:

Re: EB-2024-0026 Greater Sudbury Hydro Inc.
May 1 2025 Cost of Service - Phase 2 OPEB Recovery

These are our submissions with respect to Greater Sudbury Hydro Inc.'s (GHSI) response to the Board's questions as set out in Procedural Order No. 5 (PO#5 responses) We have also had the benefit of discussing the submissions of the other parties (as per the Board's desire that parties coordinate) prior to their filing and address these to extent necessary.

First it is necessary to say that the process set out by the Board, while helpful in moving the issue along, is deficient in the sense that VECC and other parties have not had the opportunity to test, challenge and therefore fully comprehend GHSI's PO#5 responses.

A first read of GHSI's PO#5 responses of October 15, 2025 does not fundamentally change the arguments we made on July 18, 2025 with one exception. We do take note of their observation that our argument maybe deficient in not applying symmetry to the issue of the actuarial gain DVA liability. However, without further examination it is unclear to us the veracity, materiality or solution (if any) to that matter.

In response to GHSI's suggestion of a return to cash-based accounting for OPEBs we make these observations. We submit the accounting methodology is not the issue to be decided. We do not think that the application of accrual or cash accounting changes the judgement as to whether retroactivity exists or does not. That is, we do not share Board Staff's concern that reverting to cash-based accounting triggers an issue of retroactive rate making. Retroactivity is a matter of fact and not a matter of accounting. Again, we caution that we have not had the opportunity of examining the issue in a more complete manner given the process laid out.

Our argument here and prior was not based on the accounting methodology. It was based on a principle. We argued that GHSI needed to extinguish any liabilities related to any and all employees who were not directly employed by the regulated utility and to extinguish claims related to liabilities incurred during the historical rate freeze period. It is not clear to us that what was proffered in GHSI's PO#5 response understand this or takes this into account in their accompanying analysis. In those responses the following is said:

"*VECC's affiliate exclusion for 2012–2019 cannot be quantified on the record for the reasons previously explained (historic affiliate splits and "embedded-in-rates" accruals were not tracked at that granularity in an auditable way).*"

This would seem to be a misunderstanding of our position. We posit that the pension liabilities of an employee of GHSI only begin when that person is actually and fully employed by GHSI. The records on this are, it would seem to us, easily available and undisputable. What may be misunderstood in our position is the practical issue of how the variance, or gap, between the calculated entire pension benefit and the pension benefit payable by GHSI is to be addressed. All we say is that if there is a deficient liability due to the former employment of staff with affiliate(s) those are liabilities are those of the former employer. How the consequence of that premise is addressed is not relevant to the principle to be decided.

We understand that GHSI might still be required to pay the entire benefit. How, or if, it is able to recover its shortfall from the former employee affiliate or its parent is an entirely different matter. Again, we have not had the opportunity to examine this issue with the Applicant. However, we would note that to the extent that GHSI is unable to make its expected return because it is required to pay the actual pension benefit which are now underfunded due to prior employment arrangements with an affiliate, those impacts affect its corporate parent's returns as derived from all its corporate children, including GSHI.

Regardless of whether GHSI is able to recoup funds from any contractual deficiencies of its prior agreements with hiring affiliate employees the consequence of that decision, at least with respect to pension issues, is visited upon the affiliate or that affiliate's parent corporation. Simply put, if GHSI is unsuccessful in (negotiating or ligating) recouping pension liabilities related to its past affiliate employment practice the related losses are ultimately visited upon the parent corporation in the form of lower returns. On the face of it this seems to us to be the correct result. Again, the process laid out to date does not allow us to explore this further.

We would make two further observations from the submissions of other intervenors and the Applicant. The Coalition of Concerned Manufactures and Business (CCMBC) makes the proposal that the Board need first make a finding on that the accrual method of accounting does not result in a just and reasonable rate outcome. We think there is merit in that line of argument.

In our view, as we noted above, the issue to be resolved in this case, is not the method of accounting but rather, in what is being accounted for. In that regard we reiterate our prior argument in emphasising three of the four questions we raised in the prior:

- *Can the OEB approve the recovery of costs which were to occurred prior to it having regulatory jurisdiction over the 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?*

The answer to these questions affects the recovery allowed for GSHI under either cash or accrual methodologies. Without an answer these questions the issues remain unresolved – at least on a principled basis. We agree with those who say that the matter to be decided should not be done on the

basis of rate impact or financial return but rather on the idea of what is correct. And so, we also agree with parties who argue that the issue of rate impact is not the same matter as the issue of fairness. The answer to the questions we posit would go to CCMBC question as to what constitutes a just and reasonable rate outcome.

The second issue is related to what was approved in EB-2019-0037. School Energy Coalition (SEC) make the point that "*the OEB has already approved a transition from cash to accrual, but the transitional impacts were not considered because GSHI was required to bring forward the necessary calculations in a DVA for disposition in this proceeding. Nothing prevents the OEB from effectively allowing the company to transition back now that the impacts on customers and the company are better understood. Doing so would, however, require the consent of all signatories to the approved Partial Settlement.*"

We agree. It seems to us the matter still needs to be resolved – or attempted to resolved – within the scope of the agreement of parties in the prior agreement. SEC raises questions it believes think should be addressed in reconvening parties. All of which we think are reasonable and might help resolve the issue.

However, it is our view that in order for the parties to move forward with any chance of success the Board must first decide on the three fundamental questions we have raised in our prior argument. That would, in our view, result in a framework for the parties to negotiate a way that balances the needs of the Utility's shareholder with that of its ratepayers.

We hope these submissions have been helpful.

Yours truly,

Mark C. Garner

Digitally signed by Mark C. Garner
Date: 2025.10.31 00:24:18 -04'00'

Mark Garner
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