

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an application by Veridian Connections Inc. for an order or orders approving or fixing just and reasonable distribution rates and other charges, to be effective May 1, 2012.;

**AND IN THE MATTER OF** the Board's Decision dated March 22, 2012 (File Number EB-2011-0199).

### **NOTICE OF MOTION**

Veridian Connections Inc. ("Veridian") will make a motion to the Ontario Energy Board (the "Board") on a date and at a time to be determined by the Board.

**PROPOSED METHOD OF HEARING:** Veridian proposes that the Motion be heard in writing.

**THE MOTION IS FOR** an Order or Orders of the Board:

1. Reviewing and varying its March 22, 2012 Decision and Order in the EB-2011-0199 proceeding (the "Decision") as follows:
  - a. that Veridian be permitted to recover an LRAM amount of \$480,913 representing 2010 revenue impacts of CDM program activities.<sup>1</sup>

**THE GROUND FOR THE MOTION IS REGULATORY INCONSISTENCY:**

2. On March 22, 2012, the same date that the Decision in this proceeding was issued, the Board issued a Decision and Order in the Bluewater Power ("Bluewater") proceeding (EB-2011-0153) (the "Bluewater Decision").

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<sup>1</sup> Veridian's total adjusted LRAM claim was for \$1,303,874 (Table 11 of Veridian's Reply Submission). The Board approved the recovery of \$822,961 for the 2007-2009 legacy programs (p.15 of the Decision). The difference (or unapproved amount) is \$480,913.

3. In the Bluewater Decision, the same panel of the Board as in the Veridian proceeding approved Bluewater's LRAM recovery of the effect in 2010 of its programs implemented in 2006-2010.
4. Bluewater's distribution rates were established on a forward test year, cost of service basis in 2009.
5. The basis for the Bluewater Decision was that Bluewater's 2009 Settlement Agreement specifically provided for the exclusion of CDM impacts in its load forecast. The relevant portion of Bluewater's Settlement Agreement is:

*"For the sake of clarity, the revised forecast does not reflect in any way specific electricity conservation programs."*<sup>2</sup>

6. Veridian's 2010 Settlement Agreement also provided for the exclusion of CDM impacts in its load forecast. The relevant portion of Veridian's Settlement Agreement was:

*3 b. Is the impact of CDM initiatives suitably reflected in the load forecast?*

*Complete Settlement: Veridian has not included any CDM program impacts in the 2010 load forecast as details regarding Ontario Power Authority programs in the test year were not available at the time that the load forecast was prepared. For the purpose of obtaining complete settlement of all issues, the Parties agree that this treatment is appropriate.*

7. The LRAM claims of both Veridian and Bluewater included the persisting impacts of CDM programs in a cost of service test year.
8. The only difference between Veridian's and Bluewater's LRAM claims was that Veridian provided an estimate of implicit CDM impacts in its load forecast, and reduced its LRAM claim accordingly. Specifically, Veridian proposed that its total LRAM claim of \$1,389,688 be reduced to \$1,303,874.<sup>3</sup>
9. In Veridian's Reply Submission dated January 30, 2012, it explained that in preparing a response to Board Staff interrogatory #14, it realized that its load forecast included some implicit CDM impacts related to programs delivered in prior years. The Decision referred to that oversight as a "contradiction" of the Settlement Agreement, which resulted in the Board effectively ignoring section 3b of the Settlement Agreement (section 3b is set out above).
10. Clearly, the intentions of the parties in both the Veridian and Bluewater Settlement Agreements were to exclude CDM impacts in the load forecasts. The Board respected that intention in Bluewater's case, but did not in Veridian's case.
11. The Board should have applied the same regulatory principles to both utilities by granting Veridian's 2010 LRAM claim on an adjusted basis. Rather, the Board, denied Veridian's entire 2010 LRAM claim, contrary to its treatment of Bluewater.

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<sup>2</sup> Page 14 of the Bluewater Decision.

<sup>3</sup> Tables 10 and 11 of Veridian's Reply Submission.

12. The Board has recognized the value of consistency in decision making, as stated in (EB-2011-0256):

*"...the Board recognizes the value of consistency in decision-making. Departures from established decisions should only be made on the basis of reasoned principle. However, panels of the Board are not and cannot be thought to be bound to the decisions of proceeding panels. Each panel must make its decision on the basis of the facts before it and the relevant policies and principles affecting the decision."*<sup>4</sup>

13. Veridian submits that consistency in decision-making is important to the integrity of the regulatory process and it should be abandoned only in the clearest of circumstances, that is, when circumstances of one case are clearly distinguishable from the other.
14. The principles applied by the Board in the Veridian Decision departed from those applied in the Bluewater Decision. Veridian recognizes that one Board panel cannot bind another, however the same Board panel on the same date applying almost identical facts issued contradictory decisions. Veridian submits that this regulatory inconsistency is a reasonable ground for review.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- i. the relevant filings on the record of the Bluewater Proceeding (EB-2011-0153);
- ii. the filings on the record in this proceeding (EB-2011-0199); and
- iii. such further evidence as counsel for Veridian may submit and the Board may allow.

**All of which is respectfully submitted.**

April 11, 2012



Veridian Connections Inc.  
By its Counsel: Andrew Taylor

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<sup>4</sup> At page 5.