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**BY EMAIL**

May 9, 2012

Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Veridian Connections Inc.  
Motion to Review and Vary the Board's Decision and Order dated March 22,  
2012 (EB-2011-0199)  
Board Staff Submission  
Board File No. EB-2012-0201**

In accordance with the Notice of Motion to Vary and Procedural Order No. 1, please find attached the Board Staff Submission in the above proceeding.

As a reminder, Veridian Connections Inc.'s Reply Submission is due by May 11, 2012.

Yours truly,

*Original Signed By*

Daniel Kim  
Analyst, Applications & Regulatory Audit

Encl.



# **ONTARIO ENERGY BOARD**

## **STAFF SUBMISSION**

Veridian Connections Inc.

EB-2012-0201

**May 9, 2012**

**Board Staff Submission  
Veridian Connections Inc.  
Motion to Review and Vary  
EB-2011-0201**

**Introduction**

On April 11, 2012, Veridian Connections Inc. (“Veridian”) filed with the Ontario Energy Board (the “Board”) a Notice of Motion to Review and Vary (the “Motion”) the Board’s Decision and Order dated March 22, 2012 in respect of Veridian’s 2012 Incentive Regulation Mechanism (“IRM”) rate application (EB-2011-0199).

The Motion seeks to vary the Board’s EB-2011-0199 Decision and Order so that Veridian may recover a Lost Revenue Adjustment Mechanism (“LRAM”) amount of \$480,913, which represents the difference between Veridian’s total adjusted LRAM claim of \$1,303,874 and the amount approved for recovery of \$822,961 for the 2007 to 2009 legacy programs. The ground for the Motion is an alleged inconsistency between the EB-2011-0199 Decision and Order and the Board’s decision in Bluewater Power Distribution Corporation’s (“Bluewater Power”) 2012 rate application (EB-2011-0153). Veridian proposed that the Motion be heard by way of a written hearing.

On April 25, 2012, the Board issued its Notice of Motion to Vary and Procedural Order No. 1 (the “Notice”).

On May 2, 2012, Veridian submitted additional information in support of its Motion.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by Veridian.

**Background**

The Board’s *Guidelines for Electricity Distributor Conservation and Demand Management* (the “Guidelines”) issued on March 28, 2008 outlines the information that is required when filing an application for LRAM. In its decision on Horizon’s application (EB-2009-0192) for LRAM recovery, the Board also noted that distributors should use

the most current input assumptions available at the time of the third party review when calculating a LRAM amount.

## **LRAM**

Board staff position in Veridian's 2012 IRM proceeding noted that the Guidelines state the following with respect to LRAM claims:

Lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the savings would be assumed to be incorporated in the load forecast at that time<sup>1</sup>.

Board staff also noted that in cases in which it was clear in the application or settlement agreement that an adjustment for CDM was not being incorporated into the load forecast specifically because of an expectation that an LRAM application would address the issue, and if this approach was accepted by the Board, then Board staff would agree that an LRAM application is appropriate.

Board staff further notes that Veridian, during the interrogatory and submission phase of its 2012 IRM proceeding, submitted that in accordance with their 2009 Settlement Agreement Veridian did not include any CDM program impacts in the 2010 load forecast. However, Veridian concluded that its load forecast did include approximately 22% of implicit CDM impacts related to programs delivered in prior years.

In light of this information, Board staff submits that Veridian's situation is not comparable to that of Bluewater Power. There was no evidence that Bluewater Power included any implicit CDM impacts in its load forecast.

Board staff also notes that in many of the Board's decision and orders (example Brant County Power EB-2011-0154), the Board disallowed LRAM claims for the rebasing year as well as persistence of prior year programs in and beyond the test year on the basis that these savings should have been incorporated into the applicant's load forecast at the time of rebasing.

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<sup>1</sup> Section 5.2: Calculation of LRAM, *Guidelines for Electricity Distributor Conservation and Demand Management* (EB-2008-0037)

## The Threshold Issue

Under Rule 45.01 of the Board's *Rules of Practice and Procedure*, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits. Section 45.01 of the Board's *Rules of Practice and Procedure* provides that:

In respect of a motion brought under Rule 42.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.

The threshold question was articulated in the Board's Decision on a Motion to Review Natural Gas Electricity Interface Review Decision<sup>2</sup> (the "NGEIR Decision"). The Board, in the NGEIR Decision, stated that the purpose of the threshold question is to determine whether the grounds put forward by the moving party raised a question as to the correctness of the order or the decision, and whether there was enough substance to the issues raised such that a review based on those issues could result in the Board varying, cancelling or suspending the decision.

Further, in the NGEIR Decision, the Board indicated that in order to meet the threshold question there must be an "identifiable error" in the decision for which review is sought and that "the review is not an opportunity for a party to reargue the case"<sup>3</sup>.

Board staff submits that there is no identifiable error in the Board's original decision to warrant review. Veridian's Notice of Motion alleged an inconsistency between the Board's decision in Veridian's 2012 IRM application and that in Bluewater Power's application. However, as indicated above, there was no evidence that Bluewater Power included any implicit CDM impacts in its load forecast whereas Veridian conceded that its load forecast did include CDM impacts related to programs delivered in prior years. Accordingly, in Board staff's view the evidentiary basis for the two decisions is distinct and there is no inconsistency, as alleged in the Notice.

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<sup>2</sup> EB-2006-0322 / 0388/ 0340, May 22, 2007 ("NGEIR Decision") at page 18 and EB-2011-0053, April 21, 2011 ("Grey Highlands Decision"), appeal dismissed by Divisional Court (February 23, 2012)

<sup>3</sup> NGEIR Decision, at pages 16 and 18

Accordingly, Board staff submits that the Board should not proceed with a review of the original decision as the 'threshold test' for review has not been met. If the Board does decide to review the original decision, Board staff submits that, for the same reasons set out above, Veridian's application is distinguishable from that of Bluewater Power and the two decisions are not inconsistent.

All of which is respectfully submitted