

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).

REPLY SUBMISSION #2

1. In accordance with Procedural Order No. 2 in this matter, this is the Reply Submission of Veridian Connections Inc. ("Veridian"). It pertains to the Vulnerable Energy Consumers Coalition ("VECC") May 13, 2012 submission.

(i) The Threshold Question:

2. VECC raised two points in its submission on the threshold question. The first was that regulatory inconsistency should not be accepted as a ground for review because "other parties will look to vary Board decisions on the ground of regulatory inconsistency and will inevitably rely on past Board decisions that support their alternative view".
3. Veridian submits that VECC has raised a possible outcome. If the Board hears Veridian's motion, other utilities may look to vary Board decisions on the ground of regulatory inconsistency. However, Veridian questions why such an outcome would be undesirable.

4. Both Veridian and VECC seem to accept the following rationale of the Board:

*"...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."*¹
[emphasis added]

5. Therefore, if future parties were to rely on the ground of regulatory inconsistency in support of a review motion, the Board could decide those motions on a case-by-case basis. Where the Board finds that a departure from established decisions was made on the basis of "reasoned principle", those motions would not satisfy the threshold question.
6. The principle of regulatory consistency has been supported by the Supreme Court of Canada and the Board.² By summarily dismissing that ground based on a concern of future review motions would completely discount that principle and discredit the Board's expertise.
7. The Board is a sophisticated administrative tribunal that can distinguish between regulatory inconsistency arguments that are reasonable and those that are not on the basis of reasoned principle. Further, the Board and parties who appear before the Board should want consistency of decision making so that all parties have a reasonable expectation of what to expect from its regulator, and so the Board's regulatory principles can evolve logically and reasonably.
8. The ground of regulatory inconsistency serves as a tool to ensure that the Board does not depart from established decisions in the absence of reasoned principle. This tool is available to both applicants and intervenors, since both are eligible to file motions to review a Board decision.

¹ EB-2011-0256 Decision at page 5.

² Paragraphs #21 and #22 of Veridian's May 2, 2012 motion.

9. Veridian is not trying to bind the Board in EB-2011-0199 to its decisions in the Bluewater Power and Enersource proceedings. Rather, Veridian has submitted that the Board's decision in EB-2011-0199 should be reviewed because it did not provide a reasoned principle for departing from the decisions in the Bluewater Power and Enersource proceedings.
10. The second point made by VECC was that Veridian's circumstances are distinct from those of Bluewater Power and Enersource, and consistent with those of Hydro Ottawa. Veridian respectfully disagrees.
11. Veridian will not repeat its position as to why its circumstances are consistent with those of Bluewater Power's and Enersource's, as submissions on that topic were made in Veridian's May 2, 2012 motion.
12. However, Veridian does wish to point out that its circumstances were significantly different from those of Hydro Ottawa's. The issue raised in the Hydro Ottawa proceeding was whether the Board should reimburse ratepayers the difference between Hydro Ottawa's forecasted CDM savings and its actual CDM savings. Hydro Ottawa intentionally included forecasted CDM savings in its load forecast, but its actual CDM savings were lower than those forecasted. The Board found in that case that there should be no true-up between forecasted and actual CDM savings.
13. VECC's assertion that Veridian's circumstances are consistent with those of Hydro Ottawa's is incorrect for the following reasons:
 - i. **There was no forecast of CDM savings built into Veridian's load forecast:** VECC seems to be suggesting that the *implicit* CDM savings built into Veridian's load forecast are consistent with the *forecasted* CDM savings built into Hydro Ottawa's load forecast. The implicit CDM savings in Veridian's load forecast were not forecasted. They were an unintended consequence of the use of a regression model. It was always Veridian's intention to exclude CDM savings from its load

forecast as illustrated by its settlement agreement. To claim that an unintended consequence is consistent with an intentional forecast is incorrect.

- ii. **Veridian is not requesting a true-up:** Veridian is not seeking to true-up its implicit CDM savings to its actual CDM savings. Veridian is seeking to recover all of its actual CDM savings as contemplated by the settlement agreement. In order to do so without double recovering a portion of its CDM savings, Veridian proposed to adjust its LRAM claim to account for the unintended implicit CDM savings built into its load forecast. To suggest that this is a true-up consistent with the true-up in the Hydro Ottawa proceeding is a gross distortion of Veridian's circumstances.

14. As such, Veridian's circumstances are not consistent with those of Hydro Ottawa.³ Rather, Veridian's circumstances are consistent with those of Bluewater Power and Enersource, such that those distributors intended to exclude CDM savings from their load forecasts for future recovery.

15. For all of these reasons, Veridian submits that VECC's positions on the threshold question should not be accepted by the Board.

(i) Merits of the Motion:

16. Veridian submits that VECC raised no arguments regarding the merits of the motion that have not already been addressed by Veridian. VECC repeated its argument about the consistency between Veridian's and Hydro Ottawa's circumstances, which Veridian has addressed above and does not wish to repeat.

17. Veridian would like to note that in the Hydro Ottawa proceeding, VECC was in favour of a true-up, likely because a true-up would have resulted in a reimbursement to customers. The Board rejected VECC's position in that proceeding. In this proceeding, VECC is now

³ Nor are they consistent with those of Whitby Hydro's in EB-2011-0206 or Hydro One Brampton's in EB-2011-0174, since neither of those distributors explicitly excluded CDM savings from their load forecasts in their settlement agreements.

opposing an alleged true-up, likely because a true-up by Veridian would result in higher rates. Veridian respectfully submits that VECC's positions on this topic have been inconsistent and based on whatever outcome will lead to lower rates.

18. For example, VECC opposed Veridian's LRAM claim in EB-2011-0199, yet nevertheless acknowledged in its submission that the Board's decision would have been "appropriate" had it accepted Veridian's LRAM claim:

3.25 In making these submissions, VECC acknowledges that the Board's decision could have been different in this case and yet still be appropriate. For example, the Board may have decided, in the first instance, to exercise its discretion to allow Veridian to "correct" its 2010 load forecast after the fact to remove all CDM effects as had been indicated in the settlement agreement and subsequently allowed the requested LRAM claim...

19. For all of the reasons contained herein, Veridian submits that VECC's submissions should not be accepted by the Board as justification for denying Veridian's motion.

All of which is respectfully submitted.

May 16, 2012



Veridian Connections Inc.

By its Counsel: Andrew Taylor