

2012 ELECTRICITY DISTRIBUTION RATES

Veridian Connections Inc.

Motion to Review and Vary the Ontario Energy Board's Decision and Order dated October 25, 2012 in respect of Veridian Connections Inc.'s Smart Meter Application (EB-2012-0247)

EB-2013-0022

STAFF SUBMISSION

March 22, 2013

INTRODUCTION

On January 23, 2013, Veridian Connections Inc. (“Veridian”) filed with the Ontario Energy Board (the “Board”) a Motion for Request for Review and Vary (the “Motion”) of the Board’s Decision and Order (the “Decision”) dated October 25, 2012 in respect of Veridian’s smart meter rate application (EB-2012-0247).

The Motion seeks to extend the time for filing the Motion with the Board and to vary the Decision to permit Veridian to recover an additional \$478,224 in revenue requirement related to 2009 amortization expenses associated with Smart Meter capital expenditures made in 2006, 2007, and 2008. Veridian requests that the recovery is to be made through amendment of the existing smart meter disposition rate riders (“SMDRs”) commencing on May 1, 2013 and continuing until April 30, 2014.

On March 6, 2013, the Board issued its Notice of Motion to Vary and Procedural Order No. 1 (the “Notice”), which established a deadline for Veridian to file additional evidence in support of its Motion and deadlines for submissions on the threshold question and the merits of the Motion. The Board also granted intervenor status and cost award eligibility to the Vulnerable Energy Consumers Coalition (“VECC”), as it was the only intervenor in Veridian’s smart meter rate proceeding. The Board has assigned the Motion file number EB-2013-0022.

On March 13, 2013, Veridian submitted additional evidence 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.

THE THRESHOLD ISSUE

The Test

Under Rule 45.01 of the Board’s *Rules of Practice and Procedure* (the “Rules”), 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 25.01 of the Board's Rules 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.

Rule 44.01(a) provides the grounds upon which a motion may be raised with the Board:

Every notice of motion made under Rule 42.01, in addition to the requirements under Rule 8.02, shall:

- (a) Set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
 - I. Error in fact;
 - II. Change in circumstances;
 - III. New facts that have arisen;
 - IV. Facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time.

The threshold test was articulated in the Board's decision on several motions filed in the *Natural Gas Electricity Interface Review Decision* (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".

In demonstrating an error, the moving party must show the findings are contrary to the evidence, the panel failed to address a material issue or something of a similar nature. The alleged error must be material and relevant to the outcome of the decision. The review is not an opportunity to reargue the case. A motion to review cannot succeed in varying the outcome of the decision if the moving party cannot satisfy these tests, and there is no purpose in proceeding with the motion to review.

Veridian's Motion

In its Motion, Veridian set out the following grounds for the Motion:

- a. There is an identifiable error in the Decision;
- b. There are inconsistent findings in the Decision; and
- c. The error is material and relevant to the outcome of the Decision.

Alleged Error in the Decision

Veridian noted that, although the Board fully approved Veridian's applied for smart meter capital expenditures, a combination of what Veridian describes as unusual circumstances relating to the multi-proceeding approach (i.e. application for interim disposition of smart meter related costs and application for final disposition of smart meter related costs) and the recovery of its smart meter related revenue requirement led to an error in the calculation of the rider (specifically the Smart Meter Disposition Rider or "SMDR") that was intended to fully compensate Veridian. Veridian noted that the Motion details how the 2009 amortization expense associated with 2006, 2007 and 2008 smart meter capital expenditures, which were reviewed and approved in previous rates applications, was not captured in the calculation of the final SMDRs. All of which raises a question as to the correctness of the Decision in Veridian's submission.

Veridian noted that the identifiable error relates to the failure of the SMDR to compensate Veridian for 2009 amortization expenses related to 2006, 2007, and 2008 smart meter capital expenses in the amount of \$478,223.79.

Board staff submits that this ground does not pass the threshold test because there are no new facts that have arisen or any facts that were not previously placed in evidence that could not have been discovered by reasonable diligence at the time.

Inconsistent Findings

Veridian also submits that there are inconsistent findings in the Decision. Specifically, the approval of Veridian's smart meter capital expenditures conflicts with the approval of an SMDR to recover the revenue requirement associated with the approved smart meter capital expenditures as the approved SMDR demonstrably under recovers the revenue requirement associated with the approved capital spending by \$478,223.79. Veridian noted that in the circumstances of this Motion it is not the case that Veridian is arguing for some different interpretation of the evidence that was before the Board, but Veridian is asking that the Board address a calculation error that was made when implementing the Board's approval of Veridian's smart meter capital expenditures through an SMDR.

Board staff submits that there has been no inconsistent finding in the Decision. Board staff notes that in the Decision, the Board found that Veridian's documented costs, as revised in response to interrogatories, related to smart meter procurement, installation and operation were reasonable. The Board, therefore, approved the recovery of the costs for smart meter deployment and operation as of December 31, 2011¹. Board staff submits that the Board's Decision is consistent with the evidence provided by Veridian.

Materiality of the Error

Lastly, Veridian noted that the materiality threshold for Veridian is \$231,420 based on its most recent Board approved distribution revenue requirement.

¹ Decision and Order EB-2012-0247, page 6, October 25, 2012

For the reasons above, Board staff submits that the Motion does not meet the threshold tests for bringing a motion under Rule 42.01 based on either an alleged error in the Decision of inconsistent findings in the Decision.

Board staff submits that if the Board finds that the threshold test has been met the alleged “error” is material for Veridian.

SUBMISSION

In the Motion, Veridian noted that the Board-issued Smart Meter Model Version 2.17 does not contemplate or allow for situations for stub-period recoveries, such as the recovery of the 2009 depreciation expense related to smart meters installed in 2006, 2007 and 2008.

Board staff notes that in section 4.0 of the *Smart Meter Funding and Cost Recovery – Final Disposition* Guideline G-2011-0001, dated December 15, 2011, concludes:

The use of any models and spreadsheets does not automatically imply Board approval. The onus is on the distributor to prepare, document and support its application. Board-issued Excel models and spreadsheets are offered to assist parties in providing the necessary information so as to facilitate an expeditious review of an application. The onus remains on the applicant to ensure the accuracy of the data the results.

Board staff acknowledges that the Board-issued Smart Meter Model did not explicitly contemplate Veridian’s circumstances. In general, any model is designed and tested for a specific purpose. It may have flexibility built in to accommodate different scenarios but all such scenarios cannot be anticipated. Board staff notes that the basic design of the model traces its origins back to a model first issued in 2007, but which has significantly evolved. The functionality and even the flexibility of the model has evolved over time, and has been tested thoroughly and accepted by distributors, other interested parties and the Board in a large number of applications to date.

In addition to the model evolving with time, Board staff submits that the use of the model does not preclude the need for other spreadsheets and calculations to

accommodate the special circumstances of any particular distributor or its application. Board staff submits that even in Veridian's EB-2012-0247 smart meter proceeding, an additional spreadsheet was used to allocate costs to specific customer classes and to derive class-specific SMDRs and Smart Meter Incremental Rate Riders ("SMIRRs"). This functionality has since been added to the Smart Meter Model Version 3.0, applicable for 2013 smart meter applications. Board staff further submits that even beyond this, further calculations are required to calculate SMDRs that would recover foregone SMIRR revenues for the period May 1 to November 1, 2012.

In many of the applications for smart meter cost recovery which the Board has considered and approved since the issuance of Guideline G-2011-0001 and Smart Meter Model Versions 2.17 and, now, 3.00, flexibility built into the model and usage of ancillary spreadsheets to augment the capabilities are commonly used and approved to derive the appropriate rate riders.

Veridian asserts that the inability to accommodate and therefore the omission of the 2009 amortization expense for the pre-2009 installed smart meters is an "oversight" of the Board-issued model. Board staff submits that, while this was not built into the model, the oversight was primarily the responsibility of Veridian. In preparing its Application, and using the model, Veridian should have examined whether the entries for the smart meter model on sheet 2 corresponded with its principal entries in Accounts 1555 and 1556. In such case, the discrepancy in the depreciation expense for 2009 recorded in the sub-account of 1556 should have been readily apparent to Veridian in preparing its Application. Board staff submits that Veridian could have then developed a proposal to address this issue.

Board staff submits that Veridian should have been aware that there was an amount missing prior to filing the Application, as the expenses documented in the smart meter model would have been different than the principal balances in Account 1556 for OM&A and, in particular, depreciation. Veridian should also have known about the "stub period" from the Settlement Agreement in its previous cost of service application (EB-2009-0140). Board staff submits that Veridian was in the best position to identify the missing depreciation expense during the proceeding, and it should not be incumbent on the Board, Board staff,

or VECC as the intervenor to recognize this error, which was an outcome of the Settlement Agreement.

Board staff notes, however, that the amount Veridian is requesting in its Motion is material and is not in dispute. Board staff also accepts that this amount should have been factored into the SMDR calculation as it is an outcome of the smart meter capital expenditures approved by the Board. Board staff notes that the Board has also been consistent in allowing for full recovery of the revenue requirement for approved smart meters deployed in accordance with the Government's regulations mandating smart meters be deployed to all Residential and GS < 50 kW customers. In particular, Board staff notes the Board's decision with respect to Cambridge and North Dumfries Hydro's smart meter application:

Foregone SMIRR Revenues for the Period May 1 to June 30, 2012

In its Application, CND has proposed an effective date for the SMIRR of July 1, 2012. CND's SMFA ceased on April 30, 2012, in accordance with the Tariff of Rates and Charges approved in CND's 2011 IRM rates application EB-2010-0068. In proposing an effective date of July 1, 2012, CND is effectively foregoing two months of revenue recovery of the SMIRR, related to current capital and operating costs of deployed smart meters. Board staff noted that CND has not requested recovery of this in its Application, and requested that CND confirm that it is not seeking such recovery. CND confirmed this in its reply submission.

With respect to CND's proposal to the foregoing of SMIRR revenues for May 1 to June 30, 2012 the Board has considered the following.

In finding that CND's smart meter costs are prudent, the Board considers that it is appropriate that CND receive the commensurate revenues to recover the approved costs. As the SMIRR is intended to reflect the ongoing revenue requirement in advance of a distributor's next cost of service application, the Board is of the view that on a principled basis the full amount should be reflected. The Board has, in recent decisions established mechanisms for

distributors to recover the foregone revenues from the SMIRR where the SMDR and SMIRR could not be implemented on the May 1, 2012 date. The Board therefore directs CND to calculate the foregone SMIRR revenues for the period from May 1 to August 31, 2012 in developing the SMDR, as documented above.²

However, in Board staff's submission, the responsibility for the error of the omitted depreciation expense for 2009 for previously approved smart meters, is the responsibility of Veridian, and the Board should also consider this in its findings.

- All of which is respectfully submitted -

² Decision and Order EB-2012-0086, page 9, July 26, 2012