



April 3<sup>rd</sup>, 2013

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27th Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Veridian Connections Inc., Motion for Request for Review and Variance  
Board File No. EB-2013-0022**

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In response to the March 22<sup>nd</sup>, 2013 Board staff submission in the above noted matter, please find attached the reply submission of Veridian Connections Inc.

Yours truly,

*Original signed by*

George Armstrong  
Vice President, Corporate Services

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**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 approving or fixing just and reasonable distribution rates related to Smart Meter deployment, be effective November 1, 2012.

**AND IN THE MATTER OF** a Motion to Review and Vary by Veridian Connections Inc. pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for a review of the Board's Decision and Order in proceeding EB-2012-0247.

### **Motion for Request for Review and Variance**

#### **APPLICANT'S REPLY SUBMISSIONS**

1. Pursuant to the Procedural Order issued by the Ontario Energy Board (the "Board") on March 6, 2013 Veridian Connections Inc. ("Veridian") makes the following submissions in reply to the Board Staff Submission dated March 22, 2013.
2. Veridian notes that it did not receive any submissions from VECC, the only intervenor of record in this proceeding, with respect to the requested review and variance.

#### **REQUEST FOR EXTENSION OF TIME**

3. Veridian notes that Board Staff did not raise any issues with respect to the request for an extension of time to file the request for review and variance.

#### **THRESHOLD ISSUE**

4. At page 6 of its submission Board Staff asserts "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 [sic] inconsistent findings in the Decision". Veridian respectfully disagrees with this assertion, and notes that such an assertion is inconsistent with Board Staff's later submissions.
5. Board Staff makes the following concessions at page 8 of its submission:

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.

6. Given these unequivocal concessions, Veridian does not understand how it is that Board Staff can assert that the threshold test has not been met. Veridian makes the following observations with respect to the second and third components of the threshold test that Board Staff refers to. Veridian notes that Board Staff does not take issue with component one of the threshold test (that the grounds raise a question as to the correctness of the Decision) or component four of the threshold test (that the error is material, relevant to the outcome of the decision and if corrected the reviewing panel would change the decision).

### **ALLEGED ERROR IN THE DECISION**

7. Board Staff concludes at page 5, in reference to the allegation that there is an error in the decision, that the threshold test has not been met. Board Staff makes this assertion by linking this aspect of the threshold test to a requirement that there be new facts that have arisen or facts that were not previously placed in evidence that could not have been discovered by reasonable diligence at the time.
8. With respect, Veridian submits that Board Staff has conflated the threshold test, as set out in the NGEIR Decision, with the non-exhaustive list of possible grounds for such a motion as described in Rule 44.01(a).
9. As quoted at paragraph 2 b) of the Applicant's Factum (quoting page 18 of the NGEIR Decision), the second component of the threshold test as set out in the NGEIR decision is that "there must be an identifiable error in the decision". There is no requirement that the identifiable error be tied to new facts that have arisen or facts that were not previously placed in evidence that could not have been discovered by reasonable diligence at the time; those "requirements" are simply two of the possible grounds under rule 44.01(a) that a moving party may raise in support of its motion.<sup>1</sup>
10. As noted above Board Staff concedes that there is an identifiable error in the decision; the SMDR calculation in the Decision fails to capture the amount Veridian is claiming in its Motion (\$478,223.79). Board Staff further concedes that the amount is not in dispute; it is not the case that Veridian is asking for the opportunity to simply re-argue its case. Accordingly Veridian asserts again that it is clear that the second component of the threshold test has been met.

### **THERE ARE INCONSISTENT FINDINGS IN THE DECISION**

11. Veridian is similarly confused as to how Board Staff concludes there are not inconsistent findings in the Decision, given that the recovery of costs through the Board approved SMDR does not match the Board approved level of Smart Meter Capital Expenditures. Again, Board Staff

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<sup>1</sup> Veridian notes that at page 15 of the NGEIR Decision the Board specifically determines that the list of possible grounds for a motion listed in Rule 44.01(a) is non exhaustive.

concedes that the amount of \$478,223.79 should have been factored into the SMDR that was approved by the Board; this concession means that, by definition, the Board's finding that the SMDR represents a final disposition of amounts owing to Veridian as a result of Smart Meter spending is inconsistent with the Board's findings with respect to the approved level of Smart Meter spending for Veridian.

12. Accordingly, in the context of the third component of the threshold test as to whether the Board should review the substance of the motion Veridian respectfully reiterates that it is without question, and in fact conceded by Board Staff, that the Board's approval of Veridian's Smart Meter expenditures is inconsistent with the Board's approved SMDR such that the threshold test has been met.

### **THE MOTION HAS MERIT AND THE BOARD SHOULD EXERCISE ITS JURISDICTION TO VARY THE DECISION**

13. Board Staff's submission with respect to the substance of the motion focuses on the role of the Board-Issued Smart Meter Model in the proceeding, culminating with the conclusion at page 7 that "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". Veridian respectfully submits that Board Staff has misconstrued the evidence put forward by Veridian with respect to the Motion, in particular with respect to the Board-Issued Smart Meter Model.
14. The actual evidence on the motion with respect to how the error in the calculation of the SMDR arose appears at page 6 of the Affidavit of Laurie McLorg dated January 23, 2013, paragraph 23, wherein Ms. McLorg states as follows:

It appears to Veridian that the potential for such a gap in recovery as between an interim disposition, the inclusion of partial SM related capital expenditures in rate base prior to final disposition SM related expenditures and the Model that was created by the Board for final disposition of SM expenses was a simple oversight, resulting in the failure to properly clear all the amounts recorded in Account 1556.

15. As is clear from Ms. McLorg's affidavit, it is not the case that Veridian is claiming that the under-recovery of \$478,223.79 that Veridian is asking the Board to correct was directly caused by an "oversight" in the creation of the Board Model. Veridian simply asserts that given the particular circumstances leading to the calculation of the SMDR in the Board's final disposition in this case that the Board should exercise its discretion to correct what is clearly an error in the Decision under review.
16. In the circumstances of this case the recovery of Veridian's Smart Meter expenditures (as detailed graphically in Exhibit D to the affidavit of Ms. McLorg) was split into 3 categories of costs (Amortization, Return/Pils and OM&A) occurring in 7 distinct years (2006-2012) resulting in 63 distinct "buckets" of costs. These 63 "buckets" of costs were recovered in three distinctly

different ways (an interim disposition proceeding, inclusion in 2010 base rates, and a final disposition proceeding).

17. In Veridian's submission the result of this uniquely complicated methodology for recovering its Smart Meter related spending from 2006 to 2012 was the inadvertent omission of the 2009 amortization expense relating to the 2006-2008 capital expenditures, representing 3 of the 63 "buckets" of costs.
18. Board Staff concedes at page 6 that the Board-Issued Smart Meter Model did not explicitly contemplate Veridian's circumstances. It is not the case that Veridian is ascribing, however, some element of fault to the failure of the Board-Issued Smart Meter Model in this regard. Veridian is only setting out in as much detail as possible the unique circumstances leading up to the calculation error in the SMDR, with one of those circumstances being the oddity of some 2009 related expenses (2009 OM&A and 2009 amortization expense and Return/Pils relating to 2009 capital expenditures) being recovered through the Model in the most recent Decision, some (2009 related Return and Pils) having been recovered through the interim disposition proceeding in 2010, and some (the 2009 amortization expense relating to 2006-2008 Capital Expenditures) not having been recovered at all.
19. Board Staff notes the Decision in EB-2012-0086 dated July 26, 2012 with respect to the SMDR claimed by Cambridge and North Dumfries Hydro ("CND"), and in particular page 9 where the Board denied CND's request to intentionally under-recover its smart meter related revenue requirement by foregoing two months of revenue recovery, noting that on a principled basis the full amount (of the revenue requirement) should be reflected.
20. In the present case it is not that Veridian has intentionally sought to under-recover its Smart Meter related revenue requirement; it is through error that the SMDR approved by the Board under-recovers Veridian's approved Smart Meter related revenue requirement. In Veridian's respectful submission if it is the case that on a principled basis the Board would not allow a utility to intentionally under-recover its Smart Meter related revenue requirement, then by extension the Board should, in the circumstances described in this Motion, correct a Decision of the Board that, without dispute, provides for a material under-recovery related to Smart Meter expenditures.

## **NATURE OF THE ERROR**

21. As a general response to Board Staff submissions on the merits of the request for review Veridian would simply like to reiterate that the error it is seeking to have corrected is not related to the omission of evidence that, had it been before the Board prior to a Board decision, may or may not have influenced the exercise of the Board's discretion or judgment with respect to the prudence of Veridian's Smart Meter related expenditures. Veridian is not seeking to have reconsidered in any fashion the Board's prudence analysis.
22. What Veridian is asking the Board to correct is a clear error in the calculation of the recovery that necessarily follows from the Board's analysis of the prudence of Veridian's spending. Board Staff does not, at any point, disagree with Veridian's evidence on the motion for review that there

is \$478,223.79 of approved Smart Meter related Revenue Requirement that Veridian is, by virtue of the Board's findings with respect to prudence, entitled to recover but is not included in the Board approved SMDR.

23. Veridian has set out in detail the manner in which the error occurred, how and when Veridian detected it, and how Veridian sought to correct the error in as timely a fashion as possible upon its discovery. In Veridian's respectful submission the facts as set out in the motion material support the exercise of the Board's discretion on motion for review to correct the error as requested, particularly given the nature of the error and the materiality of the claimed amount.

**All of which is respectfully submitted.**

April 3, 2013

A handwritten signature in blue ink, appearing to be 'M. Buonaguro', written over a horizontal line.

Veridian Connections Inc.

By its Counsel: Michael Buonaguro