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May 15, 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 Review and Variance
Board File No. EB-2013-0022 & EB-2012-0247**

Please find enclosed Veridian Connections Inc.'s Request for Review and Variance of the Ontario Energy Board's April 25, 2013 Decision and Order in the EB-2013-0022 proceeding.

Please do not hesitate to contact me if you have any questions.

Yours truly,

Original signed by

George Armstrong
Vice President, Corporate Services

cc Laurie McLorg, Veridian Connections Inc.
Michael Janigan, Vulnerable Energy Consumers Coalition
Shelley Grice, Vulnerable Energy Consumers Coalition

The power to make your community better.

Veridian Connections is a wholly owned subsidiary of Veridian Corporation



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 related to Smart Meter deployment, to 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 by the Board's Decision and Order in proceeding EB-2012-0247.

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 by the Board's Decision and Order in proceeding EB-2013-0022.

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 orally, and that both the threshold issue and the merits of the motion be heard together.

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

1. Reviewing and varying its April 25, 2013 Decision and Order in the EB-2013-0022 proceeding (the "Motion Decision") as follows:
 - a. varying its October 25, 2012 Decision and Order in the EB-2012-0247 proceeding (the "Original Decision") to allow Veridian to recover an additional \$478,223.79 in revenue requirement related to 2009 amortization expenses associated with Smart Meter Capital Expenditures made in 2006, 2007 and 2008, with such recovery to be made through the

amendment of the existing SMDR on July 1, 2013 and to continue until April 30, 2014

THE GROUNDS FOR THE MOTION ARE:

GROUND #1 - MISTAKE IN LAW:

2. In the Motion Decision, the Board denied Veridian's motion to review and vary the Original Decision based on the merits of Veridian's motion.
3. According to the Board in the Motion Decision, a "very important factor" that influenced its decision to deny Veridian's motion related to retroactive rate making. Specifically, the Board stated:

"A second very important factor is with respect to retroactive rate-making. If the Board were to allow recovery this would result in retroactive ratemaking in that Veridian is asking to recover an additional \$478,224 in revenue requirement related to 2009 amortization expense through revisions to the SMDR which were established in a Final Rate Order. The courts have made it very clear that retroactive rate-making, the adjustment to rates after a final rate order has been issued, is not allowed. Rather, the principles of certainty and finality are a necessary component of effective rate regulation. To allow Veridian to correct a calculation error after a final rate order was issued would require the Board to engage in retroactive ratemaking, which is contrary to the legal principles upon which the Board performs its legislated mandate.

4. Veridian respectfully submits that the Board's application of the rule against retroactive ratemaking in Veridian's circumstance was incorrect, and was therefore a mistake in law.
5. Based on the section of the Motion Decision set out above, the Board mistakenly believed that it could not correct Veridian's calculation error after the final rate order was issued in EB-2012-0247 because to do so would amount to retroactive ratemaking.
6. Veridian submits that correcting a final rate order in response to a motion to review and vary does not amount to retroactive ratemaking. If that were true, no rate order could ever be varied by a motion to review and vary. Clearly, this is not the case as the Board has varied numerous rate orders in response to motions to review and vary.¹
7. As well, the Board's own *Rules of Practice and Procedure* recognize that final orders and decisions may be reviewed and varied:

"42.01 Subject to Rule 42.02, any person may bring a motion requesting the Board to review all or part of a **final order or decision**, and to vary, suspend or cancel the order or decision." [emphasis added]

¹ For example, please refer to the Board's Decision On Motion To Review and Vary in EB-2011-0152 (Algoma Power Inc.) in which counsel was the same as on this Motion to Review and Vary.

8. The reason why varying a final order or decision on review is not retroactive ratemaking is because an order or decision is no longer "final" once the Board decides to hear a motion to review it.
9. Because the retroactive ratemaking issue was described in the Motion Decision as "a very important factor", Veridian submits that this mistake in law was an "identifiable error" and therefore requests that the Board exercise its discretion to review the Motion Decision.

GROUND #2 - THE BOARD ERRONEOUSLY FAILED TO SET RATES THAT ARE JUST AND REASONABLE

10. Pursuant to section 78(3) of the *Ontario Energy Board Act, 1998*, the Board has a statutory obligation to set rates that are just and reasonable.
11. Veridian made a calculation error that resulted in rates being approved in the Original Decision that were too low. That fact is not in dispute.
12. Further, the Motion Decision acknowledged that there was no dispute between Board staff and Veridian regarding the quantum of the calculation, that the calculation error was material, and that Veridian was entitled to recover the \$478,224 at issue in EB-2012-0247:

"Both Board staff and Veridian agree that the amount of \$478,224 that Veridian is now seeking recovery of in its Motion is both material and is not in dispute. It is also submitted by Veridian and agreed to by Board staff that the amount should have been factored into the SMDR calculation as it is an outcome of the smart meter capital expenditures approved by the Board."

13. These undisputed facts lead to the logical conclusion that Veridian's rates in EB-2012-0247 would have been just and reasonable had Veridian recovered the \$478,224 at issue. Nevertheless, the Board denied Veridian's recovery in the Motion Decision.
14. The basis for the Board's denial (in addition to the retroactive ratemaking issue described above) was that Veridian made the error and should therefore bear the consequences. Specifically, the Board stated:

"Veridian should have been aware of the correct amount of the smart meter expenditures, including amortization expenses. The Board's Guideline G-2011-0001 and Smart Meter Model make it clear that it is the responsibility of the distributor to amend the models as appropriate. The Board expects a utility to provide the Board with accurate accounting for rate setting purposes. Veridian has control of its books and records and has the responsibility to ensure mistakes do not occur."

and

"Previous decisions of the Board when dealing with distributors' errors in calculations have resulted in disallowance of the correction, when in the distributor's favour."

15. The Board's rationale is problematic for the following reasons:

- a. the Board held Veridian to a standard of perfection, which is an unreasonable, unachievable and therefore unfair standard;
 - b. the Board has given priority to punishing Veridian for its error over the Board's obligation to set rates that are just and reasonable; and
 - c. the Board's decision suggests that calculation errors that are to the detriment of distributors should not be corrected as readily (if at all) as calculation errors that are to the detriment of ratepayers. This rationale conflicts with the Board's obligation to set rates that are just and reasonable.
16. For the reasons set out above, Veridian submits that the Board in the Motion Decision erroneously failed to satisfy its obligation to set rates that are just and reasonable.
17. Accordingly, Veridian submits that the Board made a mistake in law that amounts to an identifiable error and therefore requests that the Board exercise its discretion to review the Motion Decision.

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

- i. the record of EB-2012-0247;
- ii. the record of EB-2013-0022;
- iii. the attached affidavit of Laurie McLorg dated May 14, 2013; and
- iv. such further evidence as counsel for Veridian may submit and the Board may allow.

All of which is respectfully submitted.

May 15, 2013



Veridian Connections Inc.

By its Counsel: Andrew Taylor

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 related to Smart Meter deployment, to be effective November 1, 2012.

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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 by the Board's Decision and Order in proceeding EB-2013-0022.

**AFFIDAVIT OF LAURIE D. McLORG
SWORN MAY 14th, 2013**

I, LAURIE D. McLORG, of the City of Oshawa, Ontario, MAKE OATH AND SAY:

1. I am the Vice President of Financial Services and Chief Financial Officer of Veridian Connections Inc. ("Veridian"), the Moving Party in the motion in support of which this affidavit has been sworn. I prepared the written evidence submitted on behalf of Veridian in EB-2012-0247 (the "Final Disposition Proceeding") and directed the accounting entries to which this motion relates, and as such I have knowledge of the matters hereinafter deposed.

Introduction:

2. Previously, in the Notice of Motion for Review, dated January 23rd, 2013, an affidavit sworn by myself outlined details of the gap in recovery identified within Veridian's final SM Disposition Application (EB-2012-0247) and the requested revision to the currently approved class specific Rate Rider for Disposition of Residual Historical Smart Meter Costs (otherwise known as the SMDR).
3. In that affidavit, Veridian calculated the change in the currently approved class specific rate riders that would be required to recover the requested incremental revenue requirement of \$478,223.79 over the period of May 1st, 2013 to April 30, 2014.
4. Within this Motion to Review Veridian is requesting the Board to approve a revision, effective July 1, 2013 to the amount of the currently approved class specific Rate Riders for Disposition of Residual Historical Smart Meter costs (otherwise known as the SMDR). Veridian requests no change in the sunset date of April 30, 2014 for the current riders.
5. Veridian has calculated the change in the currently approved class specific rate riders that would be required to recover the incremental revenue requirement of \$478,223.79 over the period of July 1st, 2013 to April 30th, 2014.
6. Veridian has used the same methodology as approved by the Board in the Final Disposition Proceeding in allocating recovery to the specific rate classes and calculating class specific rate riders.

7. Veridian requests revisions as outlined below:

Rate Class	Currently Approved Rate Rider	Requested Revision to Rate Rider effective July 1, 2013
Residential	\$0.55	\$0.89
Residential – Urban Year Round	\$0.55	\$0.89
Residential – Suburban Year Round	\$0.55	\$0.89
General Service Less Than 50 kW	\$3.45	\$4.82

8. In Exhibit “A” accompanying this affidavit, Veridian has provided an update to the schedule filed as Appendix “F” of Veridian’s Notice of Motion, dated January 23rd, 2013 in which the recalculation of the revenue requirement was provided as well as the calculations for the increase in the Rate Rider required.
9. Revised or recalculated amounts are highlighted and pertain only to the revised calculation of the increase in Rate Rider required due to the change in effective date from May 1st, 2013 to July 1st, 2013. No revisions have been made to the revenue requirement or the allocation to rate classes from that filed within Exhibit “F” on Veridian’s Notice of Motion, dated January 23rd, 2013.
10. The highlighted Row K calculates the increase required in the rate riders for the 10 months remaining effective July 1st, 2013 and Row L shows the requested revised amount for the rate riders, being the sum of the existing rate rider value and the increase calculated in Row K.

SWORN BEFORE ME at the City
of Pickering in the Province of Ontario
this 13 day of May, 2013

E. Maughan

Name: **Eileen Maughan, a Commissioner, etc.,
Regional Municipality of Durham, for
the Corporation of the City of Pickering.
Expires May 8, 2016.**

Laurie D. McLorg

Laurie D. McLorg
Vice President and Chief Financial
Officer

Exhibit "A" - Updated Calculation of SMDR and SMIRR amounts and Rate Riders (NOTE: No change to the SMIRR)

Revised Calculation for Class Specific SMDR - Includes Foregone SMIRR revenues - May 1st to October 31st - Updated to include 2009 Amortization related to Pre-2009 SM Capital Expenditures

	A					B			C		D		F		G
	As Filed 2009	Recalculated 2009*	2010	2011	2012	Total as Filed	Total (Recalc 2009 - 2012)	Incremental	Explanation Allocator	Evidence Reference	Total	Residential	General Service Less than 50 kW		
Revenue Requirement from Smart Meter Model - Sheet 5.SM_Rev_Reqt	\$1,343,790.48	\$1,822,014.28	\$1,657,425.89	\$1,755,576.47	\$950,747.62	\$5,707,540.46	\$6,185,764.25	\$478,223.79							
Interest on Operating Expenses from Smart Meter Model- Sheet 9-SMFA_SMDR_SMIRR	\$7,070.84	\$7,070.84	\$15,092.63	\$46,045.94		\$68,209.41	\$68,209.41	\$0.00							
Interest on SMFA revenues from Smart Meter Model - Sheet	-\$3,201.01	-\$3,201.01	-\$12,632.35	-\$41,421.62	-\$58,443.78	-\$115,698.76	-\$115,698.76	\$0.00							
TOTAL	\$1,347,660.31	\$1,825,884.10	\$1,659,886.17	\$1,760,200.79	\$892,303.84	\$5,660,051.11	\$6,138,274.90	\$478,223.79							
Total Return on Capital	\$157,056.23	\$157,056.23	\$364,229.61	\$463,651.92	\$228,250.24	\$1,213,188.00	\$1,213,188.00	\$0.00	Toal Capital Costs by Class	Table 12 - Page 23	100.00%	76.10%	23.90%		
Amortization and Interest Expense	\$163,562.08	\$692,421.08	\$424,518.05	\$568,858.53	\$243,424.91	\$1,400,363.57	\$1,929,222.58	\$528,859.00	Toal Capital Costs by Class	Table 12 - Page 23	100.00%	76.10%	23.90%		
Operating Expenses	\$1,083,531.66	\$1,083,531.66	\$876,480.44	\$616,995.53	\$363,551.03	\$2,940,558.66	\$2,940,558.66	\$0.00	Number of Smart Meters Installed for each Class	Table 12 - Page 23		103,719	8.635		
Grossed-up Taxes/PILs	-\$56,489.66	-\$107,124.87	-\$5,341.93	\$110,694.82	\$57,077.66	\$105,940.88	\$55,305.67	-\$50,635.21	Revenue Requirement allocated to each Class before PILs		\$6,082,969.24	\$5,105,935.60	\$977,033.64		
											\$55,305.67	\$46,422.59	\$8,883.08		
											Total	Residential	General Service Less than 50 kW		
TOTAL						\$5,660,051.11	\$6,138,274.90	\$478,223.79			\$6,138,274.90	\$5,152,358.19	\$985,916.71		
* -2009 Revenue Requirement updated to include 2009 amortization expense related to SM assets to December 31, 2008						Percentage of costs allocated to Residential and GS < 50 kW customer classes									
Revenue Generated from Smart Meter Funding Adder						\$4,091,832.76			100.00%		83.94%		16.06%		
Revenues Generated from SMFA						\$4,091,832.76			SMFA Revenues directly attributable to class		91.46%		7.60%		
Net Deferred Revenue Requirement						\$2,046,442.14			Residual SMFA revenues (from other metered classes) attributed evenly		0.47%		0.47%		
									Total		91.93%		8.07%		
											\$ 3,761,628.97		\$330,203.79		
						Recalculated Allocation per Class					\$2,046,442.14		\$1,390,729.22	\$655,712.93	
						Number of Metered Customers			(2012)		104,494		8,650		
H						Recalculated Smart Meter Disposition Rate Rider - when including 2009 Amortization for Pre-2009 SM Capital Expenditures (18 month rider)					\$0.74		\$4.21		
						Board Approved Smart Meter Disposition Rate Rider					\$0.55		\$3.45		
I						Recalculated Allocation per Class to include 2009 Amortization on Pre-2009 Capital Expenditures					\$1,390,729.22		\$655,712.93		
						Less: Previously Allocated per Class					\$1,031,560.49		\$536,657.86		
J						Amounts to be recovered by Rate Class for Incremental SMDR for 2009 Amortization of Pre-2009 SM Capital Expenditures			\$478,223.79		\$359,168.72		\$119,055.07		
K						Increase in Rate Rider required effective July 1, 2013 for recovery of 2009 Amortization for Pre-2009 SM Capex (for balance of Rate Rider life - 10 months)					\$0.34		\$1.38		
L						Revised Amount for SMDR Effective July 1, 2013 to April 30, 2014 (previously approved rider amount plus incremental amount required for balance of 12 month recovery)					\$0.89		\$4.82		

As reported in Veridian's RRR Filings (except for 2012 - based on customer counts to April 30th)

Smart Meter Funding Adder Revenues Year	Number of customers				Estimated Allocation of SMFA Revenues by Rate Class				SMFA revenues collected from Smart Meter Model
	Residential	GS < 50 kW	Other Metered Customer Classes (GS > 50 kW, Intermediate, Large Use)	Total Metered Customers where SMFA applied	Residential	GS < 50 kW	Other Metered Customer Classes	Total	
2009	101,547	8,501	1,054	111,102	\$ 893,053.67	\$ 74,761.93	\$ 9,269.39	\$ 977,084.98	\$ 977,084.98
2010	102,929	8,578	1,062	112,569	\$ 1,095,246.12	\$ 91,276.72	\$ 11,300.52	\$ 1,197,823.36	\$ 1,197,823.36
2011	104,060	8,595	1,054	113,709	\$ 1,274,886.70	\$ 105,301.28	\$ 12,913.04	\$ 1,393,101.02	\$ 1,393,101.02
2012 - To April 30th	104,651	8,663	1,070	114,384	\$ 479,250.97	\$ 39,672.35	\$ 4,900.08	\$ 523,823.40	\$ 523,823.40
					\$ 3,742,437.46	\$ 311,012.27	\$ 38,383.03	\$ 4,091,832.76	\$ 4,091,832.76
					91.46%	7.60%	0.94%	100.00%	
					83.94%	16.06%			
					50.00%	50.00%			
					0.469%	0.469%			
					91.93%	8.07%			
Schedule of SMFA in effect									
Rate Year	SMFA								
2008	\$ 0.73								
2009	\$ 0.73								
2010	\$ 1.00								
2011	\$ 1.00								