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BY EMAIL and RESS

February 19, 2014

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2013-0174 – Veridian Connections Inc. – Notice of Motion

We are counsel to the School Energy Coalition (“SEC”). Enclosed please find the Notice of Motion on behalf of SEC in the above-noted proceeding.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Applicant and Intervenors (by email)

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IN THE MATTER OF the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Veridian Connections Inc. for an Order or Orders approving just and reasonable rates and other service charges for the distribution of electricity, effective as of May 1, 2014.

AND IN THE MATTER OF Rule 29 of the Board's *Rules of Practice and Procedure*.

NOTICE OF MOTION

The School Energy Coalition ("SEC") will make a motion to the Ontario Energy Board ("the Board") at its offices at 2300 Yonge Street, Toronto, on a date and at a time to be fixed by the Board.

PROPOSED METHOD OF HEARING

SEC proposes that the motion be dealt with by written submissions.

THE MOTION IS FOR:

1. An order requiring Veridian Connections Inc. to provide full and adequate responses to Interrogatories 2.1-SEC-2 and 4.2-SEC-1, by producing the information requested.
2. Such further and other relief as the SEC may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

1. The Board issued a Notice of Proceeding on an application by Veridian Connections Inc. ("Veridian") pursuant to section 78 of the *Ontario Energy Board Act, 1998* for an order or orders approving just and reasonable rates and other charges for electricity distributions to be effective May 1, 2014.
2. SEC is an intervenor in this proceeding.
3. Pursuant to Procedural Order #2 issued January 16th 2013, SEC delivered written interrogatories to Veridian.

4. SEC sought various information and material that were in addition to Veridian’s application, and are relevant to the proceeding. Veridian refused to provide information requested in SEC Interrogatories 2.1-SEC-2 and 4.2-SEC-11.
5. Neither refusal was based on issue of relevance but on Veridian’s position that it is not permitted to disclose the requested information due to an agreement with a third-party.

Interrogatory 2.1-SEC-2

6. The response to Interrogatory 2.1-SEC-2 reads as follows:¹

Interrogatory

Please provide details and copies of all performance efficiency benchmarking undertaken by the Applicant.

Response

Veridian participates in an annual performance management survey coordinated by a third-party. Pursuant to the terms of the agreement with the third-party, Veridian is not permitted to disclose any details about the survey or the survey itself.

7. In Procedural Order No. 2, the Board provided an Approved Issues List, included Issue 2.1 which asks: “[d]oes the applicant’s performance in the areas of: (1) delivering on Board-approved plans from its most recent cost of service decision; (2) reliability performance; (3) service quality, and **(4) efficiency benchmarking**, support the application?” [emphasised added]
8. SEC submits that the Board and intervenors cannot answer Issue 2.1, which specifically seeks to review Veridian’s performance in the area of efficiency benchmarking, without reviewing the studies and surveys that it has conducted. SEC sought that information in Interrogatory 2.1-SEC-2.
9. Apart from Issue 2.1, understanding how Veridian measures with other utilities is an important way that parties can scrutinize the application and to determine if the proposed revenue requirement will lead to “just and reasonable” rates. The Board was clear in its *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* that benchmarking will be an increasingly important part of rate regulation of electricity distributors.²

¹ IRR 2.1-SEC-2 (See Appendix)

² *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, dated October 18 2012, at p.56, 59

10. A confidentiality agreement between a utility and a third-party is not a valid reason for non-disclosure of relevant information. The Board has on numerous occasions stated that it is not bound by confidentiality agreements between utilities and third-parties. The Board in EB-2011-0140 wrote regarding a request to limit production of a document by Hydro One Networks Inc:

As set out in the Board's *Practice Direction on Confidential Filings* (the "*Practice Direction*"), it is the Board's general policy that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent and accessible. The *Practice Direction* seeks to balance these objectives with the need to protect information properly designated as confidential. In the context of this proceeding, confidentiality concerns should not prevent access by the Board and parties to this proceeding to information in the possession of HONI and GLPT relevant to the development of the East-West Tie line. The fairness of the process is a primary consideration in this case. **Moreover, the Board is not bound by confidentiality agreements entered into by the utilities it regulates, and regulated utilities may be ordered to produce documents that are the subject of such agreements. The *Practice Direction* provides adequate mechanisms for the protection of confidential material.**³ [emphasis added]

11. Similar to this case, in EB-2012-0031 the Board ordered production of a benchmarking study even though the terms of that agreement between Hydro One Networks Inc. and the third-party provider did not allow for disclosure. The Board went on to say that:

We are somewhat surprised that Hydro One would agree to the confidentiality arrangements described by the company today. Hydro One is well aware of the Board's view of the importance of benchmarking."⁴

12. The Board also made similar comments in EB-2011-0123:

Utilities, such as Guelph Hydro must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may reasonably be required to be produced as part of the regulatory process.⁵

13. The fact that the Veridian's agreement with a third-party restricts disclosure is only relevant to its potential confidentiality treatment under the Board's rules. Veridian, like any other utility, has the ability to seek to have any document it is asked to produce be provided on a confidential basis pursuant to the *Practice Direction on Confidential Filings*. The Board will then after seeking submissions from all parties, determine if such treatment should be accorded.

14. SEC submits that the Board should order Veridian to provide the information requested in Interrogatory 2.1-SEC-2.

³ *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), dated June 14 2012, at p.3

⁴ Motion Hearing Transcript, dated October 23 2012 (EB-2012-0031) at p. 28.

⁵ *Decision on Confidentiality* (EB-2011-0123), dated August 19, 2011 at p. 3

Interrogatory 4.2-SEC-11

15. The response to SEC Interrogatory 4.2-SEC-11 reads as follows:⁶

Interrogatory

[Ref: E4/T3/S3/pg.4]

The Applicant states that in setting the compensation for its management and non-union positions that a “[c]omparison to market compensation rates are carried out on an ongoing basis through information collected during recruitment, as part of exit interviews, and through industry market surveys”. Please provide a copy of this information including all industry market surveys.

Response

Information on market compensation rates obtained during recruitment and exit interviews is not tabulated. Rather, general knowledge obtained in this manner is used to identify position pay scales that may require further assessment due to difficulties in attracting or retaining employees in a particular job category. Veridian participates in an annual management salary survey coordinated by a third-party. However, pursuant to the terms of the agreement with the third-party, Veridian is not permitted to disclose any details about the survey or the survey itself.

16. In its application, Veridian has relied on the fact that while it does not conduct a “formal compensation benchmarking study” for management and non-union employees, through a number of sources including industry market surveys, it is able to compare compensation rates to the market. SEC requested in Interrogatory 4.2-SEC-11 a copy of the information Veridian relies upon including a copy of all industry market surveys.
17. Veridian responded that while it does participate in an annual management salary survey, it cannot provide a copy since the agreement with the third-party that’s conducts the survey does not allow for disclosure.
18. The survey is clearly relevant to determining if Veridian’s proposed management compensation costs are appropriate. Further, if Veridian is seeking to rely on the fact that it is involved in such survey as a basis that the costs are reasonable, than it must disclose the entire survey to the Board and intervenors.
19. For the same reasons as outlined above with respect to Interrogatory 2.1-SEC-2, the Board is not bound by confidentiality agreements between Veridian and third-parties. SEC submits that the Board should order Veridian to provide the information requested in Interrogatory 4.2-SEC-11.

⁶ IRR 4.2-SEC-11 (See Appendix)

THE FOLLOWING DOCUMENTARY MATERIAL AND EVIDENCE WILL BE RELIED UPON AT THE HEARING OF THE MOTION:

1. The Record in EB-2013-0174.
2. Such further and other material as counsel may advise and the Board may permit.

February 19, 2013

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Counsel to Veridian Connections Inc.

AND TO: Intervenors

APPENDIX

2.1-SEC-2

Ref: *none*

Request

Please provide details and copies of all performance efficiency benchmarking undertaken by the Applicant.

Response:

Veridian participates in an annual utility performance management survey coordinated by a third-party. Pursuant to the terms of the agreement with the third-party, Veridian is not permitted to disclose any details about the survey or the survey itself.

4.2-SEC-11

Ref: E4/T3/S3/pg.4

Request

The Applicant states that in setting the compensation for its management and non-union positions that a “[c]omparison to market compensation rates are carried out on an ongoing basis through information collected during recruitment, as part of exit interviews, and through industry market surveys”. Please provide a copy of this information including all industry market surveys.

Response:

Information on market compensation rates obtained during recruitment and exit interviews is not tabulated. Rather, general knowledge obtained in this manner is used to identify position pay scales that may require further assessment due to difficulties in attracting or retaining employees in a particular job category.

Veridian participates in an annual management salary survey coordinated by a third-party. However, pursuant to the terms of the agreement with the third-party, Veridian is not permitted to disclose information about the survey or the survey itself.