

AIRD BERLIS

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DELIVERED BY RESS AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
26th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2018-0236 - Veridian Connections Inc. and Whitby Hydro Electric Corporation – MAADs Application under Section 86 of the Ontario Energy Board Act, 1998 and Related Relief

Please find attached the Reply Submission of the Applicants in the above-noted matter. This Submission is concurrently being filed on the RESS and two hard copies are being couriered to the Ontario Energy Board.

Yours truly,

AIRD & BERLIS LLP



Dennis M. O'Leary

DMO/vf
Encl.

cc: *SEC - Jay Shepherd, Shepherd Rubenstein Professional Corporation*
PWU - Richard Stephenson, Paliare Roland Rosenberg Rothstein LLP

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IN THE MATTER OF Section 18, 60, 77(5), 86(1)(c) and 86(2)(b) of the *Ontario Energy Board Act*, 1998 (the "**OEB Act**"), S.O. 1998, c. 15 (Schedule B), as amended; and

AND IN THE MATTER OF an application for the relief necessary to effect the amalgamation of Veridian Connections Inc. and Whitby Hydro Electric Corporation and to continue as LDC Mergeco.

REPLY SUBMISSION OF THE APPLICANTS

Pursuant to Procedural Order No. 3 dated November 15, 2018, this is the Reply Submission of the Applicants to the submissions made by Ontario Energy Board Staff ("**Board Staff**"), the School Energy Coalition ("**SEC**") and the Power Workers Union ("**PWU**"). The Applicants are pleased to note that each of Board Staff, SEC and PWU have concluded that the Ontario Energy Boards' ("**Board**") "no harm" test has been satisfied by the Applicants and that the evidence supports the Board approving the proposed merger.

More particularly, Board Staff submitted that the amalgamation proposed by the Applicants reasonably meets the "no harm" test as described in the Board's *Handbook to Electricity Distributor and Transmitter Consolidations* ("**Handbook**") dated January 19, 2016.¹ In coming to this position, Board Staff specifically noted that the Applicants demonstrated, through both their application and IR responses, that the amalgamation would not adversely affect customers with respect to price or quality of electricity

¹ Board Staff submission dated November 27, 2018, ("Staff Submission") page 17

service. Board Staff further submitted that the Applicants established that the proposed transactions will not have a negative effect on the cost effectiveness, economic efficiency or financial viability of Veridian Connections or Whitby Hydro².

Board Staff also made submissions in respect of the distribution license application which the Applicants filed in response to Board Staff Interrogatory No. 1. In this regard, Board Staff consider the distribution licence application complete and they support the Applicant's request for Board approval for the issuance of a new distribution licence to LDC Mergeco as part of this proceeding.³

SEC similarly supports the Board approving the merger. SEC specifically noted that the merger appears to be a natural fit, seems likely to benefit the customers of both utilities, will make LDC Mergeco a more attractive merger partner for other east of Toronto distributors and that: "in some respects, this kind of merger is the paradigm that the Province, and the Board, has been looking to when they establish policies encouraging distributor consolidation".⁴ SEC undertook "... a comparative analysis of the two utilities on the three key outcomes most important to customers..." (cost, reliability and customer service), and concluded that no harm is likely to come to customers in these areas with the more likely result being that there will be improvements.⁵ SEC submitted that the merger will result in cost efficiencies that ultimately will be available to benefit customers.⁶

² Staff submission page 5

³ Staff submission page 13

⁴ SEC submission pages 1 and 2

⁵ SEC submission page 4

⁶ SEC commission page 6

SEC also concluded that while Veridian has lower rates, the expected cost savings will be sufficient that customers of both distributors should end up with lower bills over time⁷. As part of its submission in this regard, SEC included a 2018 comparative rates table setting out its derivation of rates for the residential, commercial and industrial rate classes of both utilities⁸. While the Applicants note that SEC is supportive of the proposed transaction and that its comparative rates table was not intended to raise any concerns about the merger, the rates set out in SEC's table are not accurate and tend to exaggerate the difference between the current rates of the two distributors. In the interests of insuring accuracy, attached as an appendix to this Reply is a revised 2018 comparative rates table and a description of the corrections made by the Applicants.

The PWU submitted that the Application should be approved as filed because the Proposed Transaction meets the Board's "no harm" test and will generate benefits to customers as well as shareholders of the Applicants.⁹ PWU concluded that with respect to the reliability and quality of electricity service, there was no evidence that suggests the Proposed Transaction would cause any harm¹⁰. PWU submitted that the evidence indicates that the Applicants have a plan during the transition period to identify complementary strengths across the organizations and combine them for adoption of best practices and leverage of best systems.¹¹ The PWU concluded that the Proposed Transaction will result in savings for ratepayers, will maintain or improve reliability at no incremental cost and will achieve greater efficiency.¹² The Applicants note that the PWU

⁷ SEC submission, page 2

⁸ ditto

⁹ PWU submission of November 27, 2018, ("PWU Submission") page 3

¹⁰ PWU submission, page 8

¹¹ PWU submission, page 9

¹² PWU submission, page 9

suggested that caution be exercised in respect of staffing changes which result from the amalgamation so as to not degrade current service levels¹³ The Applicants appreciate the importance of maintaining service quality levels and agree that caution should be exercised in this regard.

As noted by Board Staff, the Board applies the "no harm" test when assessing applications that seek approval for regulated entities to consolidate.¹⁴ To facilitate the filing of merger applications, the Board issued the Handbook which explains the "no-harm" test at page 4:

"The "no harm" test considers whether the proposed transaction will have an adverse effect on the attainment of the OEB's statutory objectives, as set out in Section 1 of the *OEB Act*. The OEB will consider whether the "no harm" test is satisfied based on an assessment of the cumulative effect of the transaction on the attainment of its statutory objectives. If the proposed transaction has a positive or neutral effect on the attainment of these objectives, the OEB will approve the Application.

The OEB's objectives under Section 1 of the *OEB Act* are: [Only key sections have been reproduced below]

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

The evidence filed by the Applicants in support of this Application demonstrates not only that no harm will result from the proposed merger, it conclusively shows that the proposed transaction will have a positive impact in the areas identified in the Board's statutory objectives. More specifically, the evidence confirms that the ratepayers of the Applicants will benefit from a reduction in distribution prices relative to the status quo

¹³ PWU submission page 5

¹⁴ Staff submission page 3

without the merger and that the underlying cost structure of LDC Mergeco will be lower following the merger than what would be the case under the status quo. The evidence also demonstrates that there are likely to be improvements to the adequacy, reliability and quality of electricity service notwithstanding the fact that the merging utilities are already operating with favourable service records. The evidence also leads to the conclusion that approval of the proposed transaction will promote economic efficiency and cost effectiveness.

The evidence supporting the above conclusions has been accepted by the Board Staff, SEC and PWU. No party has challenged the evidence nor have they suggested that the no harm test has not been satisfied. The Applicants therefore submit that the record is such that the Board should approve the merger transaction. The Applicants also request that the Board concurrently approve the distribution licence application filed by LDC Mergeco and issue a new licence upon the Applicants advising the Board of the closing of the merger transaction.

Ancillary Matters

The parties raised several ancillary matters in their submissions. Board Staff submitted that the Board should require the Applicants to file a draft Earning Sharing Mechanism for the Board's review by December 31, 2021. The Applicants are in agreement with this condition.

SEC proposed that LDC Mergeco should file a combined distribution system plan within 24 months of the closing of the merger transaction. This condition is acceptable to the Applicants.

The final outstanding issue relates to the original request by the Applicants for the establishment of an accounting order to track any material differences between the revenue requirement calculated using the "pre-merger accounting policies and the revenue requirement calculated using post-merger accounting policies". This request was made in the pre-filed evidence for two reasons. First, the Applicants were aware that such a deferral account had recently been required by the Board in respect of Alectra Utilities Corporation¹⁵. Second, as of the date of filing of this Application, the Applicants had not undertaken an analysis to determine the estimated impact on the revenue requirement by any accounting policy changes that will result from the proposed transaction.

The Applicants did however undertake this analysis for the purposes of responding to SEC Interrogatory No. 10 and Board Staff Interrogatory No. 27. These calculations showed, as noted in the response to Board Staff Interrogatory No. 27, that the impact on the revenue requirement by accounting policy changes would not be material. This interrogatory response also noted that in prior MAAD's proceedings where applicants noted that the impacts from accounting policy changes were likely immaterial (EB-2018-0269-Newmarket Tay-Midland; EB-2018-0114-Alectra-Guelph; EB-2017-0212-Entegrus-St. Thomas) the Board determined that it was not appropriate to order the creation of such a deferral account to track such changes. The Applicants submit that it is inconsistent to require the account in situations where the evidence includes calculations confirming the lack of materiality, as is the case in this proceeding, when in

¹⁵ Decision and Order dated April 5, 2018, EB-2017-0024

earlier MAADs applications, the Board did not require the establishment of the account in situations where it did not have such detailed calculations.

Despite the above, Board Staff and SEC submit that the Board should require the creation of this deferral account. Board Staff clearly note that this account would only record material impacts to the revenue requirement due to accounting policy changes required by the merger. SEC's reasoning in support of the deferral account however is not clear. The Applicants believe that SEC may have confused the methodology used to calculate the amounts recorded in Whitby Hydro's account 1576 (which account is currently the subject of a request to clear and close¹⁶) with the methodology and purpose of a deferral account created to record any material revenue requirement impacts which are the result of accounting policy changes necessitated by a merger. To be clear, the Applicants calculations in response to SEC Interrogatory No. 10 are the revenue requirement impacts that are forecast due to changes in accounting treatment due to the merger. These amounts were not calculated in accordance with the methodology used in respect of Account 1576 which records the difference in depreciation expense and capitalization policies from Canadian GAAP and modified IFRS. Account 1576 does not reflect total revenue requirement impacts.

Accordingly, the Applicants continue to be of the view that a deferral account is not required given the forecast of immaterial revenue requirement impacts. It is for this reason that the request to establish such a deferral account has been withdrawn.

The Applicants therefore respectfully request the following relief from the Board:

¹⁶ Interrogatory Response to SEC #9; EB-2018-0079

- (1) Leave for Merged Holdco to acquire control of Veridian Holdco and Whitby Holdco pursuant to Section 86(2)(b) of the *OEB Act* (if required);
- (2) Leave for Veridian LDC to amalgamate with Whitby LDC to form LDC Mergeco pursuant to Section 86(1)(c) of the *OEB Act*;
- (3) Issuance of a distribution licence to LDC Mergeco pursuant to Section 60 of the *OEB Act*;
- (4) Leave for the transfer of the current and any future rate orders and rate riders of Veridian LDC and Whitby LDC to LDC Mergeco pursuant to section 18 of the *OEB Act*;
- (5) Approval for LDC Mergeco to continue to track costs to existing deferral and variance accounts; and
- (6) Cancellation pursuant to Section 77(5) of the *OEB Act* of the Distribution Licences of Veridian LDC (ED-2002-0503) and Whitby LDC (ED-2002-0571) upon the issuance of the Distribution Licence to LDC Mergeco.

All of which is respectfully submitted.

Dated at Toronto, December 5, 2018.

Appendix 1

Annual Delivery Bill - 2018 Rates

(monthly charge, volumetric rate, Group 2, LV, Tx)

Utility	Residential	GS<50	GS>50
	700 kWh	2500 kWh	150 kW
<i>Corrected (1)</i>			
Veridian	\$ 428.10	\$ 1,078.33	\$ 16,994.04
Whitby	\$ 538.34	\$ 1,445.23	\$ 20,419.20
Actual Percent Excess	25.75%	34.02%	20.16%
<i>Corrected - Excluding Group 2 Rate Riders (2)</i>			
Veridian	\$ 428.10	\$ 1,078.33	\$ 16,994.04
Whitby	\$ 522.02	\$ 1,366.99	\$ 19,668.24
Actual Percent Excess	21.94%	26.77%	15.74%
SEC original table	31.15%	41.68%	18.41%

1) Corrections included: the application of line losses to Transmission charges; smart meter entity charge reduced to reflect the current rate of \$0.57 for Whitby; and the removal of Group 1 DVA rate riders for Veridian.

2) The removal of Group 2 rate riders allows for a more consistent comparison and avoids reflecting temporary differences which are strictly timing related. Whitby disposed of Group 2 balances including stranded meter balances in 2018, whereas Veridian has addressed these items in a different rate year/s.

3) While not included in the table above, Whitby currently has a 2019 rate application before the Board which includes proposed distribution rate reductions (related to Account 1576 for regulatory/IFRS accounting changes). These reductions will provide a more consistent comparison to Veridian and further reduce the differences between Whitby and Veridian bills in 2019.