

KOSKIE MINSKY

April 24, 2019

Ernie A. Schirru
Direct Dial: 416-595-2142
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Delivered

Ontario Labour Relations Board
2-505 University Avenue
Toronto, ON M5G 2P1

Attention: Ms. Catherine Gilbert, Registrar

Dear Ms. Gilbert:


**Re: IBEW Local 636 v. Veridian Corporation, Veridian Connections Inc. and/or
Veridian Energy Inc., Whitby Hydro Energy Corporation, Elexicon Energy
Inc. and/or Elexicon Group Inc.**
**Re: Application under Section 69/1(4)
(Sale of Business & Related Employer)**

We are solicitors for the International Brotherhood of Electrical Workers, Local 636 and have been retained with respect to the above matter.

Please find enclosed completed Form A-24, Application under Section 69/1(4) (Sale of Business & Related Employer).

Yours truly,

KOSKIE MINSKY LLP


Ernie A. Schirru
EAS:lm
Enclosure

c IBEW Local 636
Attention: Messrs. B. Brown, D. Murdaca, T. Pitts

Veridian Corporation, Veridian Connections Inc. and/or Veridian Energy Inc.
Attention: Michael Angemeer

Whitby Hydro Energy Corporation
Attention: John Sanderson

Elexicon Energy Inc. and/or Elexicon Group Inc.
Attention: Lesley Gallinger

PWO, CUPE Local 1000-CLC
Attention: Tom Chessell

KM-3673895v1



ONTARIO LABOUR RELATIONS BOARD
APPLICATION UNDER SECTION 69 AND/OR
SUBSECTION 1(4) OF THE ACT
(SALE OF BUSINESS AND/OR RELATED EMPLOYER)
Labour Relations Act, 1995

Form A-24

Fields marked with an asterisk (*) are mandatory.

<p>Between: *</p> <p>International Brotherhood of Electrical Workers, Local 636</p> <p style="text-align: right;">Applicant(s)</p> <p style="text-align: center;">- and -</p> <p>Veridian Corporation, Veridian Connections Inc. and/or Veridian Energy Inc. Whitby Hydro Energy Corporation Elexicon Energy Inc. and/or Elexicon Group Inc.</p> <p style="text-align: right;">Responding Parties</p>
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- Review the Filing Guide and the Board's Rules of Procedure on acceptable methods of delivery and filing before completing this form to avoid any delay in processing.
- All forms, Notices, Information Bulletins, the Filing Guide and the Rules of Procedure may be obtained from the Board's website (<http://www.olrb.gov.on.ca>).
- To print a paper copy of this form, use **only** the "Print" buttons located within the form.
- Save a copy of your completed form and any attachments as the Board will not return them to you. To save the form at any time, use the "Save" buttons located within the form.
- If there is insufficient space on the form, attach additional pages clearly identifying the relevant section of the form. For e-filing, you may attach files by selecting the "Attach documents electronically" option.

Part A Contact Information

Instructions

- Provide the contact information for each Applicant, Responding Party and Affected Party below. If you wish to add additional parties, use the "Add" button or attach a separate page if completing the form by hand.
- If a party is an organization, provide the name and contact information of an individual who will be able to respond on behalf of that organization. When adding multiple individuals at the same organization, "Add" an additional contact section, repeat the organization name and provide that individual's contact information (e.g. name, email address, phone number).

1 (a). Applicant**Applicant 1**Type * Organization Individual

Organization Name *

International Brotherhood of Electrical Workers, Local 636

First Name

Barry

Last Name

Brown

Position/Title

Business Manager

Full Address (Number, Street, Unit/Apartment, Building Name)

1001 Ritson Road South

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town

Oshawa

Province/State

ON

Country

Postal/Zip Code

L1H 4G5

Telephone Number

1-800-955-4239

Ext.

Fax Number

1-905-286-0042

Email Address

barry053@sympatico.ca

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

Domenic Murdaca, Business Representative, Email: dmurdaca@sympatico.ca

Tim Pitts, Business Representative, Email: tpittsibew636@gmail.com

1 (b). Representative/Contact Person for the Applicant**Contact 1**Contact Person for * All Parties above Party No.(s)Indicate if this person is a Lawyer Paralegal

Organization Name

Koskie Minsky LLP

First Name

Ernie

Last Name *

Schirru

Position/Title

Counsel

Full Address (Number, Street, Unit/Apartment, Building Name)

900-20 Queen Street West

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town

Toronto

Province/State

ON

Country

Postal/Zip Code

M5H 3R3

Telephone Number

416 595 2142

Ext.

Fax Number

416 204 2893

Email Address

eschirru@kmlaw.ca

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

Lucy Minter, Legal Assistant - Email: lminter@kmlaw.ca

2 (a). Responding Party**Responding Party 1**Type * Organization Individual

Organization Name *

Veridian Corporation, Veridian Connections Inc. and/or Veridian Energy Inc.

First Name

Michael

Last Name

Angemeer

Position/Title

President & CEO

Full Address (Number, Street, Unit/Apartment, Building Name)

55 Taunton Road East

Other Address Details (e.g. PO Box, R.R. #, c/o)

City/Town

Ajax

Province/State

ON

Country

Postal/Zip Code

L1T 3V3

Telephone Number	Ext.	Fax Number	Email Address
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Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

Responding Party 2

Type * Organization Individual

Organization Name *
Whitby Hydro Energy Corporation

First Name John	Last Name Sanderson	Position/Title President & CEO
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Full Address (Number, Street, Unit/Apartment, Building Name) 100 Taunton Road East	Other Address Details (e.g. PO Box, R.R. #, c/o)
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City/Town Whitby	Province/State ON	Country	Postal/Zip Code L1N 5R8
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Telephone Number 905 668 5878	Ext.	Fax Number	Email Address
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Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

Responding Party 3

Type * Organization Individual

Organization Name *
Elexicon Energy Inc. and/or Elexicon Group Inc.

First Name Lesley	Last Name Gallinger	Position/Title President & CEO
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Full Address (Number, Street, Unit/Apartment, Building Name) 55 Taunton Road East	Other Address Details (e.g. PO Box, R.R. #, c/o)
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City/Town Ajax	Province/State ON	Country	Postal/Zip Code L1T 3V3
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Telephone Number	Ext.	Fax Number	Email Address
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Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

2 (b). Representative/Contact Person for the Responding Party, if known

3 (a). Affected Party – Employer Bargaining Agency

If this application relates to a collective agreement in the industrial, commercial, and institutional sector, complete contact information for the relevant employer bargaining agency must be provided below.

3 (b). Representative/Contact Person for the Employer Bargaining Agency, if known

4 (a). Affected Party – Employee Bargaining Agency

If this application relates to a collective agreement in the industrial, commercial, and institutional sector, complete contact information for the relevant employee bargaining agency must be provided below.

4 (b). Representative/Contact Person for the Employee Bargaining Agency, if known

5 (a). Affected Party – Accredited Employers' Organization

If this application relates to bargaining rights affecting an accredited employers' organization, complete contact information for accredited employers' organization must be provided below.

5 (b). Representative/Contact Person for the Accredited Employers' Organization, if known

6 (a). Other Affected Party

Contact information for any other person, trade union, employer or employers' organization which may be affected by the application must be completed below.

Affected Party 1

Type * Organization Individual

Organization Name *

Power Workers' Union, Canadian Union of Public Employees, Local 1000-CLC

First Name	Last Name	Position/Title
Tom	Chessell	Vice-President Sector 3

Full Address (Number, Street, Unit/Apartment, Building Name)	Other Address Details (e.g. PO Box, R.R. #, c/o)
244 Eglinton Avenue East	

City/Town	Province/State	Country	Postal/Zip Code
Toronto	ON		M4P 1K2

Telephone Number	Ext.	Fax Number	Email Address
416 322 2444		416 322 2436	tchessell@pwu.ca

Additional Contact Information, if any (Assistant's Email Address, Alternate Telephone Numbers)

P. Reece - reecep@pwu.ca; J. Camilleri - jcamilleri@pwu.ca; S. Allen - sallan@pwu.ca; C. Dassios - dassiosc@pwu.ca

6 (b). Representative/Contact Person for the Affected Party, if known

6 (c). The person, trade union, employer or employers' organization named above is affected by the application for the following reason(s):

See Schedule "A" attached

Part B Material Facts and Relief Sought

7. The Applicant applies to the Ontario Labour Relations Board under: *

Subsection 1(4) of the *Labour Relations Act, 1995* stating that
Veridian Corporation, Veridian Connections Inc. and/or Veridian Energy Inc.
Whitby Hydro Energy Corporation

are associated or related businesses or activities under common control or direction
and / or

Section 69 of the *Labour Relations Act, 1995* stating that there has been a sale of a business by the predecessor
employer(s):

to the successor employer(s):

Elexicon Energy Inc. and/or Elexicon Group Inc.

on the following date : April 1, 2019

which has affected the bargaining rights of the trade union: IBEW Local 636 & PWU, CUPE Local 1000

8. If you are applying under Section 69 of the Act, provide your position on the following:

- a. Whether the successor employer is bound by a collective agreement entered into by the trade union and the predecessor employer;
- b. Whether the successor employer is required to bargain with the trade union with a view to making a collective agreement; and/or
- c. Whether the successor employer is the employer for the purposes of a termination or certification application before the Board.

If you require more space, attach a separate document.

See Schedule "A" attached

9. Has there been a change in the character of the business of the successor employer so that it is substantially different from the business of the predecessor employer?

Yes No

10. Has there been an intermingling of employees of one business with employees of another business represented by a trade union?

Yes No

11. The Applicant makes the following request:

Describe in detail what you wish the Board to order as a result of this application. If you require more space, attach a separate document.

See Schedule "A" attached

12. In support of its request, the Applicant relies on the following material facts:

Include all of the material facts on which you rely. You will not be allowed to present evidence or make any representations about any material fact that was not set out in the application and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board. If you require more space, attach a separate document.

See Schedule "A" attached

13. Other relevant statements:

14. Attached documents:

Provide a list of the documents you are filing together with this form as instructed below.

Name your documents/attachments so that they are easily identifiable.

If you are e-filing this form, select the "Attach documents electronically" option below and attach each document using the "Add File" button.

If you are filing in a manner other than e-filing, provide the numbered list of documents in the box below.

Documents

IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website <http://www.olrb.gov.on.ca> or by calling 416-326-7500 or toll-free at 1-877-339-3335.

FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

Personal information is collected on this form under the authority of the Board's governing legislation to assist in the processing of cases before it. Information received in written or oral submissions may be used and disclosed for the proper administration of the Board's legislation and processes. Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. The *Freedom of Information and Protection of Privacy Act* may also address the collection, use and disclosure of personal information. If you have any questions, contact the Solicitors' Office at the numbers listed above or in writing to the OLRB, 505 University Ave., 2nd floor, Toronto, ON M5G 2P1.

E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. Forms and submissions may be filed with the Board by a variety of methods including the Board's e-filing system, but not by e-mail. Note that the e-filing system is not encrypted and e-filing is optional. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

HEARINGS AND DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and www.canlii.org. Some summaries and decisions may be found on the Board's website.

Documents to be Delivered

Before you file your application with the Board, you must deliver the following documents to each Responding Party and Affected Party named in Part A of this application:

- A completed copy of the Application under Section 69 and/or Subsection 1(4) of the Act (Form A-24), **including all documents you are filing with this form**; and
- A Notice to Responding Party and/or Affected Party of Application under Section 69 and/or Subsection 1(4) of the Act (Form C-9) **with the names of the parties and the date inserted**.

Note to each Responding Party and Affected Party: The documents listed above should have been delivered to you by the Applicant. The applicable response/intervention form is **Form A-25**.

Note to each Responding Party: You are required to post the Application and all Responses and Interventions where they are most likely to come to the attention of employees or other individuals affected by the Application and file a completed Confirmation of Posting form with the Board. The Confirmation of Posting form is **Form A-124**.

Once the above-listed documents have been delivered to the other parties, you must complete the following Certificate of Delivery before filing the completed form and attachments with the Board.

I have reviewed this form to confirm it is complete *

Date (yyyy/mm/dd) *
2019/04/24

Certificate of Delivery

I, Lucy Minter , Legal Assistant ,
Name * Title

certify that the documents identified above were delivered to each of the parties as set out below:

Note: You must complete delivery information for each party separately.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *
Veridian Corporation, Veridian Connections Inc. and/or Veridian Energy Inc.

Attention: Michael Angemeer

Address or fax number to which the documents were delivered *
55 Taunton Road East, Ajax, ON L1T 3V3

Method of delivery *

Hand Delivered Courier Fax Regular Mail Other

Courier Details *

The documents were given to United Messengers Ltd. on 2019/04/25

and I was advised they would be delivered not later than 2019/04/25 , at 12 : 11 a.m. p.m.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *
Whitby Hydro Energy Corporation

Attention: John Sanderson

Address or fax number to which the documents were delivered *
100 Taunton Road East, Whitby, ON L1N 5R8

Method of delivery *

Hand Delivered Courier Fax Regular Mail Other

Courier Details *

The documents were given to United Messengers Ltd. on 2019/04/25

and I was advised they would be delivered not later than 2019/04/25 , at 12 : 33 a.m. p.m.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *
Elexicon Energy Inc. and/or Elexicon Group Inc.

Attention: Lesley Gallinger

Address or fax number to which the documents were delivered *
55 Taunton Road East, Ajax, ON L1T 3V3

Method of delivery *

Hand Delivered Courier Fax Regular Mail Other

Courier Details *

The documents were given to United Messengers Ltd. on 2019/04/25

and I was advised they would be delivered not later than 2019/04/25 , at 12 : 11 a.m. p.m.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *
Power Workers' Union, Canadian Union of Public Employees, Local 1000-CLC
Attention: Tom Chessell

Address or fax number to which the documents were delivered *
244 Eglinton Avenue East, Toronto, ON M4P 1K2

Method of delivery *

Hand Delivered Courier Fax Regular Mail Other

Courier Details *

The documents were given to United Messengers Ltd. on 2019/04/25
and I was advised they would be delivered not later than 2019/04/25, at 11 : 03 a.m. p.m.

File with the Board

- File the completed form and any attachments using a method permitted by the Board's Rules of Procedure.
- Save and Print a copy of your completed form and all attachments as the Board will not return them to you.
- To e-file, click the "Submit" button below. You will receive a confirmation email once the form has been successfully submitted.
- If you choose not to e-file, print this form by clicking on the "Print" button below and then file with the Board together with any attachments.

For E-Filing only

You must provide a valid email address in order to file this form electronically so that a confirmation email may be sent to you. If you do not have a valid email address, file a paper copy of this form using an alternative method permitted by the Board's Rules of Procedure.

Submitted By:

First Name *

Last Name *

Email Address *

Confirm Email Address *

Schedule "A"

Background

1. Prior to the events giving rise to this Application, the Responding Party, Veridian Corporation and its affiliated companies Veridian Connections Inc. and Veridian Energy Inc. (cumulatively referred to as "Veridian"), was the fifth largest municipally owned electricity distributor in Ontario. Veridian was responsible for the delivery of electricity to more than 121,000 residential and business customers in the cities of Belleville and Pickering, the towns of Ajax and Gravenhurst, the Municipality of Port Hope, and the communities of Beaverton, Bowmanville, Cannington, Newcastle, Orono, Port Perry, Sunderland and Uxbridge.
2. Prior to the events giving rise to this Application, the Responding Party, Whitby Hydro Energy Corporation ("Whitby HEC"), was an electricity distributor in Ontario. Whitby HEC was responsible for the delivery of electricity to more than 39,000 residential and business customers in the Towns of Whitby, Brooklin, Ashburn and Myrtle.
3. On July 30, 2018, Veridian and Whitby HEC submitted a Mergers, Acquisitions, Amalgamations and Divestitures (MAAD) application to the Ontario Energy Board (OEB) for regulatory review and approval of the proposed merger of the two electrical utility companies.
4. On December 20, 2018, the OEB approved the proposed merger of Veridian and Whitby Hydro HEC. The new combined energy company and Responding Party, Elexicon Energy Inc. and its affiliated company Elexicon Group Inc. (cumulatively referred to as "Elexicon"), was identified as the successor company that will provide electrical utility services to the more than 162,000 residential and business customers formerly serviced by Veridian and Whitby HEC.
5. On April 1, 2019, Veridian and Whitby HEC completed the closing of an agreement to merge Veridian and Whitby HEC to form Elexicon.
6. The Applicant, International Brotherhood of Electrical Workers, Local 636 (the "IBEW"), is a trade union within the meaning of section 1(1) of the *Labour Relations Act, 1995* (the "Act").
7. The IBEW is the exclusive bargaining agent for 129 Veridian inside and outside employees.
8. The IBEW is party to a collective agreement with Veridian covering inside and outside employees effective April 1, 2015 to March 31, 2019 (the "IBEW Collective Agreement"). A copy of the IBEW Collective Agreement is attached at **Tab 1**.
9. The Power Workers' Union, CUPE Local 1000 (the "PWU") is the exclusive bargaining agent for 45 Whitby HEC inside and outside employees.
10. The PWU is party to two collective agreements with Whitby HEC – one covering outside employees effective July 1, 2015 to June 30, 2019 and another covering inside employees effective July 1, 2019 to June 30, 2019 (cumulatively referred to as the "PWU Collective Agreements"). Copies of the PWU Collective Agreements are attached at **Tabs 2 and 3** respectively.

11. The amalgamation Veridian and Whitby HEC to form Elexicon has given rise to a sale of the businesses of Veridian and Whitby HEC to Elexicon within the meaning of section 69 of the Act. Further, the electricity distribution businesses of Veridian and Whitby HEC are now under the common control and direction of Elexicon within the meaning of section 1(4) of the Act.
12. The amalgamation of Veridian and Whitby HEC to form Elexicon has given rise to overlapping bargaining rights and conflicting collective agreements which necessitates the exercise of the Ontario Labour Relations Board's discretion to order a vote to determine the successor bargaining agent of the inside and outside employees of the newly formed Elexicon as contemplated in sections 69(6) and (8) and 1(4) of the Act.

Intermingling

13. On March 20, 2019, Veridian wrote to the IBEW to confirm the merger of Veridian and Whitby HEC and the formation of Elexicon. In this correspondence, Elexicon acknowledged it is a successor employer to both Veridian and Whitby HEC and confirmed its intention to intermingle IBEW and PWU represented employees in each of the three bargaining units referred to above. A copy of this correspondence is attached at **Tab 4**.
14. Since April 1, 2019, the intermingling of IBEW and PWU represented employees in each of the three bargaining units has begun and is on pace to increase. In the circumstances, it is appropriate for the IBEW and PWU employees to have an opportunity to vote to determine whether they wish to be presented by the IBEW or the PWU in their employment with Elexicon.

Remedy

15. For all the reasons set out above, the IBEW requests that the Board make the following findings, orders and/or directions:
 - a. there has been a sale of a business by Veridian and Whitby HEC to Elexicon such that Elexicon is the success employer of the IBEW and PWU inside and outside employees formerly employed by Veridian and Whitby HEC within the meaning of section 69 of the Act;
 - b. in the alternative, Elexicon is a related employer to Veridian and Whitby HEC for labour relations purposes within the meaning of section 1(4) of the Act;
 - c. a bargaining unit consisting of the IBEW and PWU inside and outside employees formerly employed by Veridian and/or Whitby HEC and now employed by Elexicon is an appropriate go-forward bargaining unit;
 - d. there has been sufficient intermingling of the Elexicon employees in the IBEW and PWU bargaining units to justify the Board's exercise of its discretion to order a representation vote of the IBEW and PWU employees to determine the successor bargaining agent of the aforementioned affected employees contemplated by section 69(6) and (8) and 1(4) of the Act; and

- e. a representation vote of the IBEW and PWU inside and outside employees of Elexicon ought to take place forthwith to determine the identity of the successor bargaining agent.
16. Having regard to the fact that Elexicon's efforts to integrate and intermingle the IBEW and PWU employees is ongoing, the IBEW reserves the right to make such further and other submissions and/or arguments in support of this Application as they become available.

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