Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273

BY EMAIL

February 10, 2012

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

Dear Ms. Walli:

Re: Midland Power Utility Corporation
2012 IRM Distribution Rate Application
Board Staff Submission
Board File No. EB-2011-0182

In accordance with the Notice of Application and Written Hearing, please find attached the Board Staff Submission in the above proceeding. Please forward the following to Midland Power Utility Corporation and to all other registered parties to this proceeding.

In addition please remind Midland Power Utility Corporation that its Reply Submission is due by February 24, 2012.

Yours truly,

Original signed by

Suresh Advani

Encl.

Ontario

ONTARIO ENERGY BOARD

STAFF SUBMISSION

2012 ELECTRICITY DISTRIBUTION RATES

Midland Power Utility Corporation

EB-2010-0182

February 10, 2012

Introduction

Midland Power Utility Corporation (“Midland”) filed an application (the “Application”) with the Ontario Energy Board (the “Board”), received on November 10, 2011, under section 78 of the *Ontario Energy Board Act, 1998*, seeking approval for changes to the distribution rates that Midland charges for electricity distribution, to be effective May 1, 2012. The Application is based on the 3rd Generation Incentive Regulation Mechanism.

The purpose of this document is to provide the Board with the submissions of Board staff based on its review of the evidence submitted by Midland.

Board staff makes submissions on the following matters:

- Review and Disposition of Group 1 Deferral and Variance Account Balances;
- Account 1521 – Special Purpose Charge Disposition (SPC);
- Shared Tax Savings;
- Lost Revenue Adjustment Mechanism (“LRAM”) Claim; and
- Account 1562 – PILs Disposition.

Review and Disposition of Group 1 Deferral and Variance Account Balances

Background

The *Report of the Board on Electricity Distributors’ Deferral and Variance Account Review Initiative* (the “EDDVAR Report”) provides that during the IRM plan term, the distributor’s Group 1 audited account balances will be reviewed and disposed if the preset disposition threshold of $0.001 per kWh (debit or credit) is exceeded. Debit balances are recoverable from customers whereas credit balances are amounts payable to customers.
Midland requested that the Board review and approve the disposition of its December 31, 2010 balances of Group 1 Deferral and Variance account balances, including interest as of April 30, 2012. The total balance of the Group 1 accounts is a credit of

$634,913. This amount results in a total claim per kWh of ($0.00290), which exceeds the preset disposition threshold.

Midland proposed a one-year disposition period for its Group 1 account balances.

Submission

The Quantum

Board staff notes that the principal balances to be disposed as of December 31, 2010 reconcile with the amounts reported as part of the Reporting and Record-keeping Requirements ("RRR"). Board staff therefore submits that the balances should be disposed on a final basis.

Disposition Period

Board staff notes that Midland's application is consistent with the guidelines outlined in the EDDVAR Report with respect to the one-year default disposition period for Group 1 accounts.

Board staff recommends that a one-year disposition period be adopted for all of Midland's Group 1 account balances.

Account 1521 – Special Purpose Charge Disposition

Background

Midland is not requesting the disposition of the December 31, 2010 balance of account 1521, Special Purpose Charge Assessment Variance Account at this time. Specifically, in its Manager's summary, Midland stated:

> "Midland will not request disposition as this variance will be depleted once recoveries are recorded in the continuity schedule from January to April 2011".

Midland proposed to dispose of the balance in account 1521 in a future COS or IRM proceeding.

In response to Board staff interrogatory #3, Midland provided the following table which indicates a total for disposition, comprising principal as of December 31, 2011 and interest to April 30, 2012.

SPC Assessment (Principal balance)	Amount recovered from customers in 2010	Carrying Charges for 2010	December 31, 2010 Year End Principal Balance	December 31, 2010 Year End Carrying Charges Balance	Amount recovered from customers in 2011	Carrying Charges for 2011	Forecasted December 31, 2011 Year End Principal Balance	Forecasted December 31, 2011 Year End Carrying Charges Balance	Forecasted Carrying Charges for 2012 (Jan.1 to Apr.30)	Total for Disposition (Principal & Interest)
$82,891.00	$47,644.53	$238.93	$35,246.47	$238.93	$35,635..07	$124.80	($388.60)	$363.73	($1.96)	($26.83)

Submission

Board staff notes that the usual practice by the Board is to dispose of audited deferral and variance account balances. Board staff further notes that the Board has approved the disposition of unaudited balances in account 1521 in both the Horizon (EB-2011-0172) and Hydro One Brampton (EB-2011-0174) 2012 IRM proceedings.

Board staff also notes that the Board's letter issued on April 23, 2010 to all Licensed Electricity Distributors stated:

> "In accordance with section 8 of the SPC Regulation, you are required to apply to the Board no later than April 15, 2012 for an order authorizing you to clear any debit or credit balance in "Sub-account 2010 SPC Variance".

Accordingly, Board staff submits that the Board should authorize the disposition of Account 1521 as of December 31, 2010, plus the amount recovered from customers in 2011, including the appropriate carrying charges as of April 30, 2012.

Board staff submits that if the Board decides to dispose of account 1521, the disposition should be on a final basis and account 1521 should be closed.

Shared Tax Savings

Background

Midland indicated that the amount of tax sharing to be returned to ratepayers is $2,447. Midland noted that in previous Decision and Orders, the Board authorized Midland to record the approved shared tax savings amount in account 1595 for disposition in a future rate proceeding since the amount was not material. Midland requested that the Board approves the same treatment since the shared tax savings amount is also not material.

Submission

Board staff notes that Midland's proposal is consistent with Section 2.5 of Chapter 3 of the Filing Requirements for Transmission and Distribution Applications dated June 22, 2011. Therefore, Board staff has no issues with this proposal.

LRAM Claim

Background

The Board's *Guidelines for Electricity Distributor Conservation and Demand Management* (the "CDM Guidelines") issued on March 28, 2008 outline the information that is required when filing an application for LRAM or SSM recovery.

In its decision on Horizon's application (EB-2009-0192) for LRAM recovery, the Board also noted that distributors should use the most current input assumptions available at the time of the third party review when calculating a LRAM amount.

Midland PUC originally sought to recover a total LRAM claim of $76,737.50 over a one-year period. In response to Board staff interrogatories, Midland PUC updated its LRAM claim using the final 2010 OPA program results. Midland PUC's updated LRAM claim is $69,635. The lost revenues include the effect of: (i) persistence of 2006-2009 CDM programs in 2010 and 2011; (ii) 2010 CDM programs in 2010; and (iii) persistence of 2010 CDM programs in 2011.

Submission

Persisting impacts of 2006-2009 programs

Midland PUC has requested the recovery of an LRAM amount that includes lost revenues for the persisting impacts from 2006, 2007, 2008, and 2009 programs in 2010 and 2011.

Board staff notes that Midland PUC's rates were last rebased in 2009.

Board staff notes that the CDM Guidelines state the following with respect to LRAM claims:

> Lost revenues are only accruable until new rates (based on a new revenue requirement and load forecast) are set by the Board, as the savings would be assumed to be incorporated in the load forecast at that time[1].

Board staff also notes that in its Decision and Order on Hydro One Brampton's 2012 IRM application (EB-2011-0174), the Board disallowed LRAM claims for the rebasing year as well as persistence of prior year programs in and beyond the test year on the basis that these savings should have been incorporated into the applicant's load forecast at the time of rebasing.

In cases in which it was clear in the application or settlement agreement that an adjustment for CDM was not being incorporated into the load forecast specifically because of an expectation that an LRAM application would address the issue, and if this approach was accepted by the Board, then Board staff would agree that an LRAM application is appropriate. Midland PUC may want to highlight in its reply whether the issue of an LRAM application was addressed in their cost of service application.

In the absence of the above information, Board staff therefore does not support the recovery of the requested persisting lost revenues from 2006, 2007, 2008, and 2009 CDM programs in 2010 or 2011 as these amounts should have been built into Midland PUC's last approved load forecast.

[1] Section 5.2: Calculation of LRAM, Guidelines for Electricity Distributor Conservation and Demand Management (EB-2008-0037)

<u>2010 programs</u>

Board staff notes that Midland PUC has not collected the lost revenues associated with CDM programs delivered in 2010, a year in which Midland PUC was under IRM. Board staff supports the approval of the 2010 lost revenues that were the result of 2010 CDM programs, as these lost revenues took place during an IRM year and Midland PUC did not previously recover these amounts. Board staff notes that this is consistent with what the Board noted in its decisions on applications from Horizon (EB-2011-0172), Hydro One Brampton (EB-2011-0174), and Whitby Hydro (EB-2011-0206).

Board staff requests that Midland PUC provide an updated LRAM amount that only includes lost revenues from 2010 CDM programs in 2010 and the associated rate riders.

Board staff submits that it is premature to consider any lost revenue from 2010 programs persisting in 2011.

Account 1562 Deferred Payments-in-lieu of Taxes ("PILs") Disposition

Background

The PILs evidence filed by Midland for the period October 1, 2001 through April 30, 2006 in this proceeding includes tax returns, financial statements, Excel models from prior applications, calculations of amounts recovered from customers, SIMPIL[2] Excel worksheets and continuity schedules that show the principal and interest amounts included in the account 1562 deferred PILs balance. In pre-filed evidence, Midland applied to collect from customers a debit balance of $173,418 consisting of a principal amount of $125,178 plus related carrying charges of $48,239. In response to interrogatories, Midland amended its evidence to support a recovery of $164,412 consisting of a principal amount of $117,908 plus related carrying charges of $46,504.[3]

---

[2] Spreadsheet implementation model for payments-in-lieu of taxes
[3] Midland_IRR_PILS_2001-06_ACCT_20120127.XLS, Tab Continuity Sch. 2001 to 2012.

Midland created the receivable from ratepayers principally by choosing the maximum blended income tax rates in each year even though it was never subject to the maximum income tax rates. The variances can be found in the SIMPIL models for 2001-2005 on sheet TAXCALC. The proxy and billed amounts can be found in the Excel workbook (Midland_IRR_PILS_2001-06_ACCT_20120127.XLS) submitted in response to Board staff's interrogatories 5 to 8.

Account 1562 Balance to be Collected from Ratepayers	**$ Principal Amounts**
Board approved PILs proxy entitlement 2001 - April 30, 2006	1,232,997
PILs amounts billed from Midland's evidence - 2002-2006	1,244,936
Net amount to be refunded to customers – credit balance	**-11,939**
Variances from SIMPIL sheet TAXCALC	
For tax year 2001	11,717
For tax year 2002	33,024
For tax year 2003	-22,817
For tax year 2004	13,807
For tax year 2005	94,115
Total of variances – debit balance	**129,846**
Net principal amount Midland wants to collect from ratepayers	**117,907**

Midland through its own tax planning strategies created losses of $1,406,482[4] which it used to avoid paying any income taxes during the period October 1, 2001 to December 31, 2005.[5] While Midland was subject to small amounts of corporate minimum tax, this minimum tax was recoverable when Midland began paying income taxes sometime after the 2005 tax year. Based on the Board's instructions issued in the 2002 application guidelines, corporate minimum tax was not used in the determination of the PILs proxy.[6]

Combined PILs Proceeding EB-2008-0381

The Board conducted a combined proceeding (EB-2008-0381) for three applicants, namely, Halton Hills, Barrie and ENWIN ("Combined PILs Proceeding"). Each of these

[4] Application, pdf page 529.
[5] Application, pdf pages 529, 607, 692, 772.
[6] EB-2008-0381, Exhibit: 2002_Application_PILs_proxy_notes_180102, May 14, 2010, page 1.

applicants was subject to the maximum income tax rates for the tax years 2001 through 2005 as supported by their tax evidence submitted in the case. The following tables of income tax rates can be found on page 17 of the Board's decision in the Combined PILs Proceeding.

Maximum Income Tax Rates in Percentages						
	2001 4th Quarter	**2002**	**2003**	**2004**	**2005**	**2006**
Federal	27.00	25.00	23.00	21.00	21.00	21.00
Federal Surtax	1.12	1.12	1.12	1.12	1.12	1.12
Ontario	12.50	12.50	12.50	14.00	14.00	14.00
Combined Rate	40.62	38.62	36.62	36.12	36.12	36.12
Gross-up Rate	39.50	37.50	35.50	35.00	35.00	35.00

Minimum Income Tax Rates in Percentages						
	2001 4th Quarter	**2002**	**2003**	**2004**	**2005**	**2006**
Federal	12.00	12.00	12.00	12.00	12.00	12.00
Federal Surtax	1.12	1.12	1.12	1.12	1.12	1.12
Ontario	6.00	6.00	5.50	5.50	5.50	5.50
Combined Rate	19.12	19.12	18.62	18.62	18.62	18.62
Gross-up Rate	18.00	18.00	17.50	17.50	17.50	17.50

Board staff made a submission which was specifically based on the tax evidence filed in the case and which was directed towards the three applicant distributors in the Combined PILs Proceeding:

> "Board staff submitted that the Applicants should use the combined and gross-up income tax rates shown in the table "Maximum Income Tax Rates in Percentages" for the following purposes in this proceeding."[7]

Based on the specific tax evidence submitted in the Combined PILs Proceeding the Board made the following finding:

> "The Board finds that the Applicants are to use the applicable tax rate percentages from the applicable table above for the purposes proposed by Board staff in its reply

[7] EB-2008-0381, Combined Proceeding, June 24, 2011, page 17.

submission."[8]

Submission

Income Tax Rates Used in SIMPIL Models Sheet TAXCALC

The SIMPIL models require income tax rates to be input in order to calculate the variances that support some of the entries in account 1562 deferred PILs. These income tax rates are entered on sheet TAXCALC by the applicant. In response to Board staff's interrogatory #5, Midland stated:

> "Based on the above information in the Board's Decision, it is Midland PUC's view that the Board decided to use the blended maximum tax rate for the three distributors that submitted evidence in the Combined Proceeding EB-2008-0381 even though the taxable income for the three distributors suggests a lower tax rate could be used in some cases. As a result, in order to be consistent with the Board Decision Midland PUC chose to use the blended maximum tax rate."

On December 21, 2001 the Board issued filing guidelines to all electricity distribution utilities for the March 1, 2002 distribution rate adjustments. Supplemental instructions were issued on January 18, 2002. The Board issued detailed instructions and several filing models created in Excel to make the application process easier for the distributors. The intent was to have the distributors file in January 2002 and the Board's Orders would be issued in February and March for rates effective March 1, 2002.[9]

Of the 96 former municipal electric utilities ("MEUs")[10] that filed 2002 applications, 37 distributors had a rate base below $10 million. Between the $10 million and $15 million thresholds discussed below, there were nine (9) distributors that filed applications.

In the 2002 application process, Midland filed its evidence consisting of a manager's summary, a rate adjustment model ("RAM") and a PILs proxy model.[11] Rate base as established in the 2001 unbundling application ("RUD") was used as a proxy for taxable capital in the 2002 PILs proxy application. Midland's rate base as approved by the

[8] EB-2008-0381, Combined Proceeding, June 24, 2011, page 19.
[9] Filing Guidelines for March 1, 2002 Distribution Rate Adjustments, December 21, 2001.
[10] Municipal Electric Utility
[11] RP-2002-0069/ EB-2002-0078

Board was $8,211,325.[12]

Corporate taxpayers are eligible for the full federal small business deduction when taxable capital is below $10 million. The small business deduction is phased out on a straight-line basis as taxable capital increases above $10 million, and is completely eliminated when taxable capital reaches $15 million.[13] The taxpayer pays a lower rate of income tax than the maximum rate as long as taxable capital remains below $15 million.

In comparison to Midland, the rate bases filed by the three applicants in the Combined Proceeding were as follows.

Distributor	**2002 Rate Base**
Midland	$8,211,325
Halton Hills	$25,052,968
Barrie	$108,021,367
ENWIN	$161,325,087

Based on the tax facts filed in the Combined Proceeding, the three applicants were not eligible to claim the small business deduction. The Board therefore directed the applicants to use the tax rates as shown above in the table entitled "Maximum Income Tax Rates in Percentages".

Board staff submits that Midland was not subject to the maximum income tax rates during the tax years 2001 through 2005 and, therefore, Board staff submits that Midland should not use these maximum income tax rates to calculate the variances it wants to collect from its ratepayers.

Board staff submits that Midland should use the income tax rates shown above in the table entitled "Minimum Income Tax Rates in Percentages". To effect this change, Midland must <u>enter</u> (i.e. over-ride the formulas) in the SIMPIL models for the years 2001 through 2005 on sheet TAXCALC the income tax rates exactly as shown in the table entitled "Minimum Income Tax Rates in Percentages", update its continuity schedule, and re-file the 2001-2005 active Excel SIMPIL models to support the entries in the

[12] See SIMPIL models submitted by Midland, sheet REGINFO.
[13] Income Tax Act, section 125 (5.1)

continuity schedule.

CDM Amount to be Entered on 2005 SIMPIL sheet TAXCALC Cell G44

Midland filed a PILs proxy model in its 2005 rate application.[14] In that model, Midland used a CDM amount of $40,000 in the determination of the PILs proxy it applied to include in distribution rates.

In the 2005 SIMPIL model, applicants must enter the actual CDM costs incurred on the same row as the proxy amount in order to generate the correct variance for true-up purposes. Midland entered the proxy of $40,000 on sheet TAXCALC, cell C44. In cell G44, Midland entered an actual tax amount of $4,000. In response to Board staff interrogatory #7, Midland correctly pointed out that the $4,000 in cell G44 does not relate to CDM. Midland stated the following.

> “The $4,000 referred to above is not attributed to CDM, but is a gain shown on financial statements as a result of the sale of assets (Line 401, Schedule 1 of the 2005 Corporate Tax Return T-1 - Page 693 of Manager’s Summary).
>
> CDM Third Tranche monies spent in 2005 total $72,370.50 which are reflected as a debit to the “Energy revenue $20,908,383” on the 2005 audited Financial Statements.”[15]

Board staff submits that the amount of $72,370.50 which was deducted from revenues in the 2005 audited financial statements must be added to the $4,000 and entered in 2005 SIMPIL, sheet TAXCALC, cell G44, in order to determine the correct true-up amount. Board staff estimates that the variance which will then appear in cells E44 and E117 will be $36,370.50 ($76,370.50 – 40,000).

Board staff submits that Midland must re-file the 2005 active Excel SIMPIL model and the continuity schedule after it enters the actual CDM amount of $72,370.50.

All of which is respectfully submitted

[14] RP-2005-0013/ EB-2005-0049
[15] Response to Board Staff Interrogatories, page 21.