



MIDLAND POWER UTILITY CORPORATION
16984 Highway#12 P.O. Box 820
Midland Ontario L4R 4P4

February 24,2012

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

Dear Ms. Walli,

Midland Power Utility Corporation – License #ED-2002-0541
OEB File No.: EB-2011-0182

Enclosed please find Midland's Submission. We have filed this Submission under the RESS filing system with the OEB. Midland has also emailed and mailed two copies of the above to you under separate cover.

Please contact the undersigned should you require any further information.

Yours very truly,

MIDLAND POWER UTILITY CORPORATION

A handwritten signature in black ink, appearing to read 'Phil Marley'.

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Midland Power Utility Corporation

REPLY SUBMISSION

2012 ELECTRICITY DISTRIBUTION RATES

EB-2011-0182

Submitted February 24, 2012

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OVERVIEW/INTRODUCTION

This is the reply submission of Midland Power Utility Corporation (Midland PUC) in regard to its 2012 3rd Generation Incentive Regulation Mechanism for an order approving just and reasonable rates for the distribution of electricity effective May 1, 2012 (Application). Midland PUC's submission is filed in reply to submissions filed by Ontario Energy Board Staff ("Board Staff") February 10, 2012 and Vulnerable Energy Consumers Coalition (VECC) February 8, 2012.

Midland PUC is the electricity distributor licensed by the Ontario Energy Board (OEB) to service the area known as the Town of Midland pursuant to the legal boundary limits except for the following:

The parcel of land surrounded by the northern Town boundary and the centerline of the roads, beginning at a point on Old Penetanguishene Road southerly to a point at Harbourview Drive (if extended), easterly along Harbourview to Fuller Street, then northerly along Fuller Street to Gawley Drive, then easterly along Gawley Drive to the shoreline of Georgian Bay.

The parcel of land described above laying east of Fuller Street was formerly known as Sunnyside and the parcel of land described above laying west of Fuller Street was formerly known as Portage Park.

Midland PUC operates an electrical distribution system with a total service area of 20 square kilometers within its boundaries.

Midland PUC filed the Application on November 10, 2011 under section 78 of the Ontario Energy Board Act, 1998. Midland PUC submitted its responses to interrogatories from OEB Staff and VECC on January 27, 2012.

REPLY SUBMISSION – BOARD STAFF

**REVIEW AND DISPOSITION OF GROUP 1 DEFERRAL AND VARIANCE
ACCOUNTS**

Midland PUC agrees with Board staff (pg.3) the disposition of Group 1 Deferral and Variance Account balances as at December 31, 2010 and interest to April 30, 2012 be disposed of over a one year period commencing May 1, 2012.

ACCOUNT 1521 – SPECIAL PURPOSE CHARGE DISPOSITION (SPC)

Midland PUC agrees with Board staff (pg.4) table which indicates a total principal and interest credit to customers of \$26.83. Midland PUC agrees with Board Staff (pg.4) to dispose of Account 1521 including the amounts recovered from customers in 2011, including carrying charges to April 30, 2012. Midland PUC does not agree with Board Staff (pg.4) the disposition should be on a final basis and that account 1521 should be closed. Midland PUC submits that final disposition should not be based on forecasted recoveries or interest rates, but should be based on actual recoveries and rates. Midland PUC therefore submits should the Board decide to dispose of account 1521 that it dispose of \$26.83 and a true up be completed when Midland PUC files its next COS Rate Application or IRM Application, whichever is first.

SHARED TAX SAVINGS

Midland PUC agrees with Board staff (pg.5) and requests the board approve the same treatment as in previous Decisions and Orders whereby the shared tax savings amount is recorded in account 1595 for disposition in a future rate proceeding since the amount is not material.

**ACCOUNT 1562 DEFERRED PAYMENTS-IN-LIEU OF TAXES (“PILS”)
DISPOSITION**

In the Board staff submission in regard to “Account 1562 Deferred Payments-in-lieu of Taxes (“PILs”) Disposition”, two main issues are raised:

a) CDM Amount to be entered in the 2005 SIMPIL model; and

b) The appropriate tax rate to be used for the purposes of true-up.

With regard to the first issue, Midland PUC agrees with Board staff 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. Midland PUC submits it will file all necessary revisions to the models once the Board has provided a final Decision on the issues related to the disposition of Account 1562.

With regard to the second issue, the appropriate tax rate to be used for the purposes of true-up, Midland PUC strongly disagrees with Board Staff’s submission on this issue. Midland PUC’s submission on this issue will show that, as of time of preparing this submission, the Board has approved the maximum blended tax rate, not only for all the cases related to the Combined PILs Proceeding EB-2008-0381 (“the Combined Proceeding), but also for all 2012 approved distribution rate applications that include the disposition of Account 1562. In other words, the Board has approved, to date, the maximum blended tax rate for the purposes of true-up in all cases, whether the distributor was large, medium or small and where all have very different income tax circumstances between them

On page 8 of Board staff submission it is stated “Midland through its own tax planning strategies created losses of \$1,406,4824 which it used to avoid paying any income taxes during the period October 1, 2001 to December 31, 2005”. Midland PUC submits it did not have a tax planning strategy to avoid paying income taxes. The losses incurred were as a

result of the treatment of regulatory asset balances for tax purposes. A timing difference between income taxes incurred for tax purposes vs. PILS included in rates via OEB Regulatory Accounting purposes resulted in the losses. It would appear Board staff is suggesting that since these losses occurred and caused Midland PUC to pay no income taxes during the period October 1, 2001 to December 31, 2005 then the maximum blended tax rate should not be used for true-up purposes.

Board staff also submitted in the Combined Proceeding for the three applicants, namely, Barrie Hydro Distribution Inc., ENWIN Utilities Ltd. ("ENWIN") and Halton Hills Hydro, that each of these 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. A summary of the information provided in the SIMPIL models submitted by the three applicants in the Combined Proceeding is outlined below:

<u>Distributor's from the Combined Proceeding</u>						
	2002 Rate Base	2001	2002	2003	2004	2005
Barrie Hydro Distribution Inc.	\$108,021,367					
	Net Taxable Income	(\$3,025,316)	(199,424)	\$2,728,422	\$9,496,972	\$11,824,614
	Total Income Tax	\$0	\$0	\$965,811	\$3,380,364	4,171,784
	Effective Tax Rate when Taxes Paid			35.40%	35.59%	35.28%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				
ENWIN Utilities Ltd.	\$161,325,087					
	Net Taxable Income	Not able to find information on OEB Website	(8,920,950)	\$2,297,179	(9,972,719)	(4,808,709)
	Total Income Tax		\$0	\$0	\$0	0
	Effective Tax Rate when Taxes Paid					
	Tax Rate Used in True-Up		38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				

Halton Hills Hydro Inc.	\$25,052,968					
	Net Taxable Income	(\$853,140)	\$693,654	\$2,316,056	\$1,657,774	\$1,575,260
	Total Income Tax	\$0	\$266,198	\$849,284	\$547,618	531,984
	Effective Tax Rate when Taxes Paid		38.38%	36.67%	33.03%	33.77%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				

For all three applicants the maximum tax rate was used for the purposes of true-up. However, the above indicates that, similar to Midland PUC, ENWIN did not pay any income taxes during the period October 1, 2001 to December 31, 2005. Based on this, it is Midland PUC's submission that it would not be fair and reasonable to allow ENWIN the use of the maximum blended tax rates for the purposes of true-up when they did not pay any income taxes during the period October 1, 2001 to December 31, 2005 but then turn around and suggest Midland PUC should not use the maximum blended tax rate since they did not pay any income taxes during the same period.

In addition, Board staff submits that since Midland PUC's 2002 rate base is \$8,211,325 it is subject to the small business deduction. As a result, it should not be allowed to use the maximum blended tax rate for the purposes of true-up. Midland PUC has reviewed the SIMPIL models of all the 2012 distribution rate applicants that have a Board Decision, at the time this submission was prepared, that includes a component for the disposition of account 1562. The following is a summary of that review:

<u>Distributor's with Approved 2012 Rates Including 1562 Disposition</u>						
	2002 Rate Base	2001	2002	2003	2004	2005
Grimsby Power Inc.	\$11,829,863					
	Net Taxable Income	(\$692,024)	\$0	\$641,059	\$731,057	\$383,542
	Total Income Tax	\$0	\$0	\$209,879	\$241,765	105,918
	Effective Tax Rate when Taxes Paid			32.74%	33.07%	27.62%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				

Hydro One Brampton Networks Inc.	\$211,672,968					
	Net Taxable Income	\$2,649,611	\$3,092,539	\$16,465,975	\$19,785,187	\$22,614,954
	Total Income Tax	\$1,091,008	\$1,250,466	\$5,973,856	\$7,146,297	8,168,522
	Effective Tax Rate when Taxes Paid	41.18%	40.43%	36.28%	36.12%	36.12%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				
Norfolk Power Distribution Inc.	\$28,259,071					
	Net Taxable Income	(\$938,247)	\$0	\$0	\$0	\$828,541
	Total Income Tax	\$0	\$0	\$0	\$0	281,148
	Effective Tax Rate when Taxes Paid					33.93%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				
Oshawa PUC Networks Inc.	\$52,062,025					
	Net Taxable Income	(\$4,013,774)	\$0	\$5,166,486	\$5,530,539	\$5,027,868
	Total Income Tax	\$0	\$0	\$1,891,968	\$1,996,630	1,789,066
	Effective Tax Rate when Taxes Paid			36.62%	36.10%	35.58%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				
Hydro Ottawa Limited	\$386,493,612					
	Net Taxable Income	Not able to find information on OEB Website	(\$17,737,119)	\$0	(1)	\$4,546,858
	Total Income Tax		\$0	\$0	\$0	1,806,163
	Effective Tax Rate when Taxes Paid					39.72%
	Tax Rate Used in True-Up		38.62%	36.62%	36.12%	36.12%
			Maximum Tax Rate			
Whitby Hydro Electric Corporation	\$56,508,433					
	Net Taxable Income	(\$1,354,846)	\$0	\$352,814	\$1,298,884	\$4,379,711
	Total Income Tax	\$0	\$0	\$129,201	\$469,158	1,581,916
	Effective Tax Rate when Taxes Paid			36.62%	36.12%	36.12%
	Tax Rate Used in True-Up	40.62%	38.62%	36.62%	36.12%	36.12%
		Maximum Tax Rate				

Putting aside in all 2012 rate application cases the Board has approved the maximum blended tax rate for the purposes of true-up, Midland PUC would particularly like to focus on the Grimsby Power Inc. (“Grimsby”) approved application. Grimsby had a 2002 rate base of \$11,829,863 and was subject to the small business deduction since its’ rate base was between \$10 million and \$15 million. However, final 2012 distribution rates were approved for Grimsby with a disposition of account 1562 component assuming the maximum blended tax rate for true-up purposes. Midland PUC understands the Grimsby 2012 distribution rates were approved based on the Board approving a settlement proposal that included a settlement on the issue of the disposition of account 1562. It is also Midland PUC’s understanding the Board typically would not approve a settled issue that was not consistent with Board policy. As a result, it is Midland PUC’s submission that it would not be consistent with Board policy to allow Grimsby the use of the maximum blended tax rates for the purposes of true-up when they are subject to the small business deduction, but then again turn around and suggest Midland PUC should not use the maximum blended tax rate since they are subject to the small business deduction.

Midland PUC understands the following comments were provided in the application, but believe it is important to repeat them at this time. Midland PUC incorporated the maximum blended tax rate in the models for true-up purposes. In support of this methodology, Midland PUC relied on the OEB’s Decision in EB-2008-0381 which states, in part:

“ALL OTHER DISTRIBUTORS

Following the approach used in the Regulatory Asset proceeding, the Board will establish a process whereby the conclusions from this proceeding may be applied to the remaining distributors.

*Each remaining distributor will be expected to apply for final disposition of account 1562 with its next general rates application (either IRM or cost of service). If the distributor files evidence in accordance with all the **various decisions made in the course of this proceeding**, including the use of the updated model referenced above and certifies to that*

1 *effect, the distributor may expect that the determination of the final account balance will be*
2 *handled expeditiously and in a largely administrative manner.*

3
4 *Distributors are of course able to file on a basis which differs from that which is*
5 *contemplated by the decisions in this proceeding. In that event, the application can be*
6 *expected to take some time to process, and therefore, should not be made as part of an IRM*
7 *application."*

8
9 In referring to the words "*various decisions made in the course of this proceeding*", the
10 Board decided a certain way to handle the tax rates as per Issue #9 of the Combined
11 Proceeding. To not follow the Board Decision on this issue would not promote the
12 statement of the Board in their Decision that "*the distributor may expect that the*
13 *determination of the final account balance will be handled expeditiously and in a largely*
14 *administrative manner*".

15
16 In addition, a review of the background on Issue #9 in the Board Decision indicates that
17 Board staff suggested the effective tax rate method should be used to determine the tax rate
18 for the true up purposes, but this was denied by the Board.

19
20 It would appear the Board simplified the process by choosing the maximum blended tax
21 rate for true-up purposes. To have each LDC come up with their own rate will not allow the
22 Board to deal with issue "expeditiously and in a largely administrative manner."

23
24 In Midland PUC's view, it would also appear with recent approvals for 2012 rates, the
25 Board has consistently used a simplified approach by approving the use of the maximum
26 blended tax rate for true-up purposes in all cases to date. It would appear to Midland PUC
27 Board staff is still trying to argue the same position once again in their submission that was
28 denied by the Board in the Decision on the Combined Proceeding.

29

1 Based on the above, it is Midland PUC's submission for the purposes of true-up the
2 maximum blended tax rate should be used consistent with all Board Decisions to date.

3
4 Board staff have proposed the minimum blended income tax rates should be used by
5 Midland PUC for the purposes of true-up and that the models should be resubmitted under
6 this assumption. Based on the above discussion, Midland PUC submits the use of the
7 minimum blended income tax rate for true-up would not be appropriate and not be a fair
8 and reasonable approach. It is also Midland PUC's understanding the record is closed and
9 to provide the requested information within the Board staff's submission would be
10 inconsistent with the current practices of the Board. Midland PUC further submits it will
11 file all necessary revisions to the models upon the final Decision of the Board.

12
13 In the event the Board establishes the blended maximum tax rate is not to be used for
14 Midland PUC, in the alternative, Midland PUC would submit the tax rates listed below be
15 used for the purposes of true-up. For 2001 and 2002, the tax rates are the minimum tax rate
16 applicable to an incurred taxable regulatory income of zero. For 2003 to 2005, the tax rate
17 is the effective tax rate based on Midland PUC incurred taxable regulatory income.

2001	2002	2003	2004	2005
19.12%	19.12%	29.41%	31.58%	29.7%

18
19 Under the alternative scenarios Midland PUC would owe the customer around \$246k,
20 including interest up to April 30, 2012. This would cause a significant impact on the level
21 of operational cash for Midland PUC and could move the utility in the direction of financial
22 hardship. As a result, Midland PUC would request since this true-up amount occurred over
23 a five year period it would be paid back to the customer over a five year period. Further,
24 this will provide the ability to smooth rates over a period of time as Midland PUC's next
25 COS Application will be completed for the four year period commencing May, 2013.

LRAM – OEB Staff

Midland PUC submits its 2009 COS Application included a load forecast supported by regression analysis based on monthly data from May 2002 to December 2007. In the regression analysis performed at that time, no variables were identified relating any LRAM effects as Midland PUC did not feel enough data was available at this time to accurately represent the effects of CDM savings and as well, this process was not released until August of 2008. Midland PUC's COS Application was also filed in August of 2008 and consequently, did not incorporate any details of CDM as the programming was in the development stages. Midland PUC therefore disagrees with Board Staff submission (pg.6) that the recovery of the requested persisting lost revenues from 2006, 2007, 2008 and 2009 CDM programs in 2010 or 2011 be denied. Midland PUC requests the Board to allow recovery of persisting lost revenues from 2006, 2007, 2008 and 2009 CDM programs in 2010 or 2011.

Midland PUC disagrees with Board Staff (pg. 7) submission that it is premature to consider any lost revenue from 2010 programs persisting in 2011 for the reasons identified in the Response to VECC submission detailed below.

Notwithstanding the above, Midland PUC provides the following updated LRAM amount that includes lost revenues only from 2010 CDM programs in 2010.

Rate Riders by Class

Rate class	LRAM \$	2009 Audited RRR (Note 1)	Volumetric Rate
<u>OPA Programs</u>			
RESIDENTIAL	\$2,465.68	49,791,737	\$0.00005
GENERAL SERVICE <50KW	\$5,658.05	27,650,878	\$0.0002
GENERAL SERVICE >50KW	\$3,099.27	332,681	\$0.0093
	\$11,223.00		

REPLY SUBMISSION – VECC

LRAM

Midland PUC agrees with VECC's submission (pg.4, Item 2.8) that the impact on lost revenues in 2009 is immaterial. Midland also agrees with VECC's submission (pg. 4 Item 2.9) that expired energy savings are not included in the proposed LRAM claim in 2010 and 2011.

With respect to VECC's submission (pg. 4 & 5, Item 2.11, Item 2.14), Midland PUC would respectfully submit that while the Board's direction with respect to savings assumed to be incorporated in the load forecast is acknowledged, insufficient historical CDM savings data (2006, 2007 only) was available to provide the statistical basis for the inclusion of a CDM specific variable for load forecasting purposes in the 2009 COS Application. Savings results in 2006 and 2007 are also representative of the formative years for OPA programs and their delivery and did not reflect the impacts of more comprehensive OPA programming in 2008, 2009 and 2010. As such, the full impacts of CDM programming in subsequent years could not be forecast with any reasonable degree of accuracy, nor could an accurate forecast be derived from only 2 years of historical data

(2006 and 2007). Consequently, CDM savings were not incorporated into the 2009 COS Application load forecast.

In addition, Midland PUC would submit during the 2009 COS Application, LRAM and CDM programming was a relatively new process. The guidelines did not require LDCs to provide or keep track of this historical information.

Midland PUC further submits with respect to VECC's submission (Item 2.12, pg 5) , there was no claim for true up of the effects of CDM activities to be considered since there were no impacts of CDM activities accurately forecast in the 2009 rebasing year.

Midland PUC disagrees with VECC's submission (pg 5, Item 2.13). For reasons stated in response to Item 2.11 above, Midland PUC submits the effects of CDM activities could not have been accurately forecast in 2009 and therefore were exempt from exclusion in the rebasing year and beyond.

Midland PUC disagrees with VECC's submission (pg. 5, Item 2.15). Since Midland PUC's Application is during an IRM year and is not rebasing, these findings are irrelevant.

Midland PUC disagrees with VECC's submission (pg. 5, Item 2.16). It is Midland PUC's submission that the assumption of inclusion of energy savings in the 2009 load forecast is not valid. There have been no changes to the 2009 load forecast since 2009 and as mentioned previously this load forecast did not include any adjustments for CDM savings. All persistent results should therefore be included in calculation of 2010 and 2011 LRAM amounts.

Midland PUC would further submit the 2011 OPA Assumptions and Measures List defines an Effective Useful Life (EUL) of every measure which includes persistence. Consequently, VECC's position that the energy savings are not accruable in 2010 and 2011 go against the basis upon which the OPA programming is designed.

1
2 Midland PUC agrees with VECC's submission (pg. 5, Item 2.17).

3
4 Midland PUC disagrees with VECC's submission (pg. 5, Item 2.18 and Item 2.23). In
5 2012, Midland PUC submits a reasonable period of time has passed to validate the use of
6 2010 results persistence into 2011. This is also consistent with the OEB CDM Guideline
7 requirement that LRAM calculations be performed retrospectively.

8
9 Midland PUC agrees with VECC's submission (pg. 6, Item 2.19). Midland PUC submits it
10 is applying for a retrospective LRAM adjustment to recover lost revenues from distributor
11 supported CDM activities in a prior year.

12
13 Midland PUC disagrees with VECC's submission (pg. 6, Item 2.20). Midland PUC
14 submits similar to Midland PUC's response to VECC Item 2.18, no 2011 program results
15 have been included in LRAM calculations. It is Midland PUC's submission that sufficient
16 time has passed to include 2010 persistence results into 2011.

17
18 Midland PUC disagrees with VECC's submission (pg. 6, Item 2.22). Midland PUC
19 submits and reconfirms the most recent OPA 2006-2010 Final CDM Results Report -
20 Midland Power Utility Corporation were used for all LRAM calculations. No 2011
21 program results have been included in these calculations.

22
23 Midland PUC disagrees with VECC's submission (pg. 6, Item 2.1). It is Midland PUC's
24 understanding an LRAM claim would be available to mitigate lost revenues resulting from
25 CDM activities. Midland PUC would respectfully request the Board to approve the LRAM
26 claim and associated rate riders, as set out in our response to OEB Staff interrogatory #4 (f)
27 in the amount of \$69,635.

Midland PUC disagrees with VECC's submission (pg. 6, Item 3.1). Midland PUC notes VECC has identified the same concern relating to the LRAM component in several 2012 LDC rate applications. Midland PUC understands intervenors recover their costs for their prudent review of those applications and preparation of independent interrogatories. Many LDCs received the same detailed interrogatories from VECC. Therefore, Midland PUC submits any cost awards approved by the Board to reimburse VECC should be based on one interrogatory and submission only and not duplicated for subsequent inclusion in other LDC applications interventions.

All of which is respectfully submitted,

MIDLAND PUC POWER UTILITY CORPORATION



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