

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

AND IN THE MATTER OF an application by Midland Power
Utility Corporation for an order or orders approving or fixing just
and reasonable distribution rates and other charges, to be effective
May 1, 2012.

AND IN THE MATTER OF the Board's Decision with
Reasons dated April 4, 2012.

**MOTION RECORD OF MIDLAND POWER
UTILITY CORPORATION**

For a Review of the Board's Decision Dated April 4, 2012

Midland Power Utility Corporation
By its Counsel
Borden Ladner Gervais LLP
40 King Street West
Suite 4100
Toronto, ON M5H 3Y5

James C. Sidlofsky
(T) (416) 367-6277
(F) (416) 361-2751
(E) jsidlofsky@blg.com

TO: Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
26th. Floor
Toronto ON M4P 1E4
Tel: (416) 481-1967
Fax: (416) 440-7656

AND TO: Intervenor of Record

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EB-2011-0182

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Reasons dated April 4, 2012.

NOTICE OF MOTION

TAKE NOTICE that Midland Power Utility Corporation ("Midland") will make a
motion to the Ontario Energy Board (the "Board"), 26th Floor, 2300 Yonge Street, Toronto,
Ontario.

PROPOSED METHOD OF HEARING: The motion is proposed to be heard in a
manner to be determined by the Board.

THE MOTION IS FOR:

- a) A review and variance of that portion of the Board's Decision With Reasons dated
April 4, 2012, in the matter of Midland's 2012 Incentive Regulation Mechanism
("IRM") distribution rate adjustment application, relating to the Review and
Disposition of Account 1562: Deferred Payments in Lieu of Taxes, in which the
Board directed Midland as follows:

"The Board therefore directs Midland to enter (i.e., over-ride the formulas) in the SIMPIL
models for the years 2001 to 2005 on sheet TAXCALC the income tax rates as shown in
the table "Minimum Income Tax Rates in Percentages" in the decision of the Board in the
combined proceeding, update its continuity schedule, and re-file the 2001 to 2005 active
Excel SIMPIL models to support the entries in the continuity schedule";¹

¹ Decision with Reasons, EB-2011-0182, April 4, 2012, at p.15

- b) The substitution of the taxation rates provided by Midland in its response to Board Staff Interrogatory No.5(c) and discussed in Midland's Reply submission, or similar rates based on the principle that the rates to be used should be reflective of how income taxes would have been determined for each of the rate applications in respect of which the true-up of that account is now taking place;
- c) The Board's permission to file supplementary material related to this motion, as discussed below, within 14 days of the delivery of this Notice;
- d) An order staying the operation of that portion of the Board's Decision dated April 4, 2012 and the Rate Order dated April 20, 2012 related to Account 1562 pending the resolution of this motion. Because the Account 1562 credit is incorporated into the Deferral and Variance Account Rider in the Rate Order, this may involve a stay of the payment of that credit rider by Midland and an appropriate adjustment following the disposition of the Motion. Alternatively, Midland requests an order allowing the revenue requirement impact of the motion to be tracked and recovered from ratepayers if the motion is successful;
- e) An order extending the time for recovery of the Deferral and Variance Accounts to two years from the one year provided for in the Decision; and
- f) A declaration that the rates and charges set out in the Board's April 20, 2012 Rate Order in this matter are interim pending the disposition of this Motion.

THE GROUNDS FOR THE MOTION ARE:

- **Account 1562**
1. Midland applied for distribution rates effective May 1, 2012 under the Board's 3rd Generation Incentive Regulation Mechanism rate making process. As part of that Application, Midland requested disposition of the balance in Account 1562 - Deferred PILS, in accordance with the Board's Decision and Order in its combined review proceeding on Account 1562 (EB-2008-0381) dated June 24, 2011 (the "Combined PILs Decision"). VECC was granted intervenor status in the proceeding, but only in respect

of issues related to LRAM. The matter of PILs is beyond the scope of VECC's intervention in this Application.

2. In preparing its SIMPIL models for the purpose of determining the PILs balance for disposition in rates, Midland based its calculations on the following maximum tax rates, as set out in the Combined PILs Decision:
 - 2001: 40.62%;
 - 2002: 38.62%;
 - 2003: 36.62%;
 - 2004: 36.12%; and
 - 2005: 36.12%
3. At pages 10-13 of its Application, in its Manager's Summary, Midland provided its rationale for using the maximum true-up rates, consistent with the Board's findings in the Combined PILs Decision.
4. During the Interrogatory process, in Board Staff interrogatory No. 5(c), Board Staff made the following request:

“Board Staff requests Midland to determine the appropriate blended federal and Ontario income tax rates for each year based on the adjusted regulatory net income for tax purposes shown in the table and to provide all of the calculations. Board Staff has estimated the income tax rates to be approximately 18% for 2002, 26% for 2003, 30% for 2004 and 27% for 2005.”
5. In its response to Interrogatory 5(c), delivered on January 27, 2012, Midland noted that Board Staff appeared to have used a tax rate half way between the minimum and maximum tax rates, notwithstanding that, as discussed in Midland's response to Question 5(a), the Combined PILs Decision had directed distributors to use a maximum blended tax rate. However, Midland determined the blended tax rate and showed the resulting calculations as requested by Board Staff. The taxable income reported on Midland's T2 tax returns was adjusted to remove any additions/deductions to taxable income resulting from regulatory asset changes. Tax rates for 2001 and 2002 were the minimum approved tax rates. Midland obtained blended tax rates from its external auditors for 2003 to 2005 based on these revised taxable incomes.

6. In their February 10, 2012 submission on the Application, Board Staff commented on Midland's Application, including Midland's approach to Account 1562. Board Staff stated, in part:

"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. (at p.7)

...

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. The taxpayer pays a lower rate of income tax than the maximum rate as long as taxable capital remains below \$15 million.

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'." (at p.11)

7. The Board Staff recommendation implied that any distributor having less than \$10 million in taxable capital and receiving the full small business deduction is automatically assumed to pay minimum rates.
8. In its reply submission dated February 24, 2012, Midland defended the use of maximum tax rates but submitted that in the event that the use of the maximum rates were not approved by the Board, the rates that should be used were the effective tax rates set out at page 11 of the Midland reply. Those rates (19.12% for 2001; 19.12% for 2002; 29.41% for 2003; 31.58% for 2004; and 29.7% for 2005) corresponded to the rates shown in the detailed calculations provided by Midland in response to Board Staff Interrogatory 5(c).
9. In its Decision and Order issued April 4, 2012, the Board summarized the issues relating to appropriate true-up tax rates. The Board also made the following comments on the effective tax rates shown by Midland in its reply submission:

“Midland did not provide an explanation of how it calculated these income tax rates, or why these tax rates would have been applicable to its tax position during the period under review. (at p.14)

...

The Board notes that Midland was not subject to the maximum taxation rates over the 2001 to 2005 period and that it was also eligible for the full small business deduction. The Board is not persuaded that the alternative taxation rates proposed by Midland should be used, as the evidentiary basis to support the proposed tax rates in 2003, 2004 and 2005 was not provided and the tax rates were not subject to discovery, as Midland filed these alternative tax rates in its reply submission. "

The Board agrees with the submission of Board staff that Midland should use the income tax rates shown in the table entitled ‘Minimum Income Tax Rates in Percentages’ provided in Board staff’s submission based on in the Board’s decision in the PILS Combined Proceeding on page 17.” (at p.15)

10. The maximum rates proposed by Midland, if approved by the Board, would have resulted in the recovery of \$173,417, as at April 30, 2012, from Midland’s customers. The minimum rates proposed by Board Staff and approved by the Board in its Decision result in the requirement that Midland pay \$483,400 to its customers. The rates presented by Midland in response to Board Staff Interrogatory No. 5(c) would result in the payment by Midland of \$245,872 to its customers.
11. Midland has considered the Board’s Decision and reviewed the Board Staff submission, and acknowledges that the use of the maximum rates would not be appropriate in its circumstances. However, Midland respectfully submits that the Board has erred in a number of ways in its determination that Midland is to use the minimum rates and in its rejection of the alternative rates set out in Midland’s response to Board Staff Interrogatory No. 5(c). Specifically:
 - a) Midland respectfully submits that the Board erred in fact, in finding that there was no evidentiary basis for the alternative tax rates shown in Midland’s reply submission. In fact, Midland did provide detailed calculations to support those effective corporate tax rates in response to Board Staff IR 5(c) as part of the discovery process. These rate derivations were specifically requested by Board

staff based on a revised taxable income adjusted for regulatory asset changes. The rates were explained in Midland's interrogatory response, and all necessary calculations were shown as required; and

- b) Midland respectfully submits that the Board erred in its adoption of the minimum rates for Midland. The arbitrary use of minimum rates assumes that any distributor having less than \$10 million in taxable capital and receiving the full small business deduction will pay minimum rates. This is incorrect, and is inconsistent with the Board's approach in the Combined PILs proceeding and with its decisions in other Account 1562-related applications. All of the three applicants in the Combined PILs proceeding had a level of taxable income which put them in the highest weighted average tax bracket. The measure of taxable income was the level of regulatory taxable income used in the PILS determination models to calculate the amount of PILS that were included in rates. They also had levels of taxable capital which precluded them from taking advantage of lower tax rates resulting from application of the small business deduction. The approval of tax rates also reflected the change to federal and provincial income tax rates on a year by year specific basis relative to the tax rates that were used to calculate PILS that were included in rates. As a result the Board approved effective maximum tax rates for the three applicants taking into consideration the following three key factors:

- Taxable income equal to regulatory taxable income used in the PILs determination models to calculate the amount of PILs that were included in rates;
- Level of taxable capital to determine if small business reductions to tax rates were appropriate; and
- Legislated annual federal and provincial income tax rates for the specific years.

Midland understands the minimum tax rates to have been approved using the same approach. Those rates also represent the effective tax rates for smaller

utilities (with lower levels of taxable income and the ability to maximize the small business deduction to reduce tax rates). This approach properly reflects the intent of the SIMPILS process to capture changes in legislated tax rates. The PILs included in rates were determined well in advance of the actual tax years using proxies for what the actual tax rates would be. Utilizing the actual tax rates that would be applicable to the same level of regulatory net income as used to set PILs in rates properly captures the changes in legislation. This captures the difference between the rates used to determine PILs included in rates and what the PILs would have been if they were set in the actual tax year with full knowledge of any changes in tax rates. For those distributors that do not have characteristics that would allow them to utilize the approved minimum or maximum rates, the correct approach, which is consistent with the Board's Combined PILs Decision, is to apply the 3 key factors outlined above to utility specific values. The alternative effective rates proposed by Midland in response to Board Staff Interrogatory No. 5(c) reflect this correct approach.

12. In addition to the errors set out above, Midland respectfully submits that the Board's Decision in this Application is inconsistent with its decisions in respect of other distributors in similar circumstances. To date, Midland is aware of other distributors in respect of which the Board has approved effective rates that fall between the maximum and minimum rates set out in the Combined PILs Decision. One example is Welland Hydro Electric System Corp. ("Welland"). In that case (EB-2011-0202), the Board Staff submission on Welland Hydro's rates, which was approved by the Board, also supports this position. The excerpt below is taken from the Board Staff submission dated January 9, 2012:

"For the 2002, 2003 and 2004 tax years, Welland calculated the income tax rates to be used in the true-up calculations in the SIMPIL models by selecting the regulatory taxable income from its 2002 rate application and determining how much tax would have applied to that amount of taxable income in 2002, 2003 and 2004. For the 2005 tax year, Welland used the regulatory taxable income from its 2005 rate application to calculate the taxes payable on that amount, and thereby derived the income tax rate used in the 2005 SIMPIL worksheets.

Staff submits that given the tax facts in Welland's case, and the tax losses during the period, Welland's methodology for determining the income tax rates used in the SIMPIL model true-up calculations is a reasonable alternative because the approach was symmetrical with how income taxes would have been determined for each of the rate applications."

13. Midland is still compiling information with respect to those distributors that have received similar PILs treatment as Welland. Midland respectfully requests that it be allowed a brief amount of additional time to complete its research in this regard. Midland anticipates filing its additional information in this regard, which may include affidavit evidence, within 14 days of the date of filing this Notice.
14. While Midland acknowledges that the decision of another panel cannot bind the panel in the current proceeding, Midland submits that by issuing conflicting decisions in similar fact situations, the Board has created significant uncertainty in the proper understanding of the Board's Combined PILs Decision. This is an important issue, in that it will still affect the clearance of Account 1562 balances for other Ontario electricity distributors.
15. As noted above, Midland has requested the substitution of the taxation rates approved by the Board with those provided by Midland in its response to Board Staff Interrogatory No.5(c) and discussed in Midland's Reply submission, or similar rates based on the principle that the rates to be used in the should be reflective of how income taxes would have been determined for each of the rate applications in respect of which the true-up of that account is now taking place. Since receiving the Board's Decision, Midland has had its auditors review its calculations provided in response to Board Staff Interrogatory No.5(c), and its auditors' report in this regard, in which Midland's auditors explain how they calculated revised effective tax rates using the three criteria discussed above, accompanies this Notice as Appendix A. Those rates are 33.43% for 2001; 30.34% for 2002; 28.0% for 2003; 25.1% for 2004; and 28.29% for 2005. As the Board will see, Midland's auditors' calculated rates are similar, but not identical to those shown by Midland. In order to ensure the most accurate calculation possible and to allow for Board Staff and Board scrutiny of those

calculations, Midland proposes that if the Board accepts its proposed approach to the calculation of the rates (that is, that Midland's rates should fall between the minimum and maximum set out in the Combined PILs Decision), it would file its calculations of the rates in a manner similar to a draft rate order. Those rates would then be subject to review and comment by Board staff and a reply by Midland, with the Board making the final determination on the rates at that time.

- **Disposition of Deferral and Variance Account Balances**

16. In its Application, when it calculated its Deferral and Variance Account balances for disposition, the net amount was a credit of \$461,496 to customers. This value included the recovery of \$173,418 from its customers related to the Account 1562 PILs disposition (based on the use of maximum rates). If the Board's Decision with respect to the use of minimum rates remains in place, this eliminates the \$173,418 previously assumed to be payable by customers and adds a further credit of \$483,400, for a total credit of \$1,118,314. If the Board accepts Midland's proposed use of effective tax rates as set out in its response to Board Staff Interrogatory No. 5(c) and its Reply submission, the \$173,418 previously assumed to be payable by customers is still eliminated, and there would be a further credit of \$205,686, for a revised total credit of \$840,600.
17. In the following table, Midland has illustrated the distribution rate and bill impacts of the Board's Decision to use a one year recovery period for deferral and variance accounts assuming minimum tax rates (as set out in the Decision) and the effective tax rates shown in Midland's response to Board Staff Interrogatory No. 5(c) and its Reply submission. Midland has also illustrated the distribution rate and bill impacts of using two and four year recovery periods.

Midland Power Utility Corporation

Bill Impacts - Distribution and Total Bill

Recoveries Over 1 Year, 2 Years, 4 Years

Effective Tax Rate		Rate Rider	Dist Impact	Total Bill Impact
(\$245,872)				
	one year	(0.00455)	-20.30%	-5.45%
	two year	(0.00222)	-14.38%	-3.80%
	four year	(0.00106)	-11.41%	-2.97%
Minimum Tax Rate				
(\$483,400)				
	one year	(0.00695)	-26.42%	-7.17%
	two year	(0.00342)	-17.44%	-4.65%
	four year	(0.00166)	-12.94%	-3.39%

18. It is clear from the table that a one year disposition will reduce the distribution portion of the bill by over 25% based on the Board's Decision, or by almost 20% if its proposed approach to tax rates is used. Midland submits that this will have adverse impacts on its cash flow and would unnecessarily create significant volatility in customer bills, particularly with next year being a rebasing year for Midland. The result for customers will likely be a significant decrease in the distribution portion of the bill for one year followed by a significant increase in the following year. Midland respectfully suggests that a more appropriate approach is for the Board to provide for a two year recovery period. This will allow for reasonable credits to customers in the current rate year and a measure of relief from increases that may occur in the rebasing year.
19. The two year approach to disposition is consistent with that approved by the Board in its April 19, 2012 Decision in COLLUS Power Inc.'s 2012 3rd Generation IRM Rate Adjustment Application (EB-2011-0161). In that case, the Deferral and Variance Account balance was a credit of approximately \$980,000, and COLLUS had proposed a

four year disposition period. Board staff made the following submission in that regard:

“Disposition Period

Board staff notes that COLLUS Power’s application is not consistent with the guidelines outlined in the EDDVAR Report with respect to the default disposition period for Group 1 accounts (i.e. one year). COLLUS Power has requested a four-year disposition period citing as reasons the need to mitigate rate fluctuations over time.

While recognizing the value of the EDDVAR Report in guiding decisions with respect to the disposition of deferral and variance account balances, Board staff notes that in the past, the Board has made decisions which deviate from the EDDVAR Report if it deems it in the public interest to do so. For example, in Guelph Hydro’s 2010 IRM application (EB-2009-0226), Guelph Hydro requested to dispose of Group 1 Account balances over a four-year period citing that disposition over a one-year period would negatively impact its cash flows. In that proceeding, Board staff submitted that while some volatility in customer bills may occur, it was in the best interest of customers to dispose of account balances over a shorter time frame so as to reduce intergenerational inequity. The Board found that Guelph’s rationale for proposing to extend the disposition was reasonable but believed that a four-year disposition period was too long. The Board found that a disposition period of two years was appropriate.

In the current application, Board staff believes that using a disposition period as long as four years would also contribute to intergenerational inequity. However, Board staff however recognizes that some volatility in electricity bills may result from adopting a shorter disposition period. Board staff is of the view that the Board should strike a balance between reducing intergenerational inequity and mitigating rate volatility.

Board staff recommends that a two-year disposition period be adopted for all of COLLUS Power’s Group 1 account balances.”

20. The Board approved the COLLUS disposition over a two year period. Midland respectfully requests that the Board vary its Decision to provide for a two year disposition period, consistent with its approach to the COLLUS application.
21. Midland also relies upon:
 - (a) Rules 7 and 42-44 of the Board’s *Rules of Practice and Procedure*; and
 - (b) such further grounds and material as counsel may advise and this honourable tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Board's Decision with Reasons dated April 4, 2012;
- (b) The Board's Rate Order dated April 20, 2012;
- (c) The Board's Decision in its Combined PILs Proceeding (EB-2008-0381);
- (d) EB-2011-0182 – Extracts from Midland's Application pertaining to Account 1562;
- (e) EB-2011-0182 – Midland Response to Board Staff IR 5(c);
- (f) EB-2011-0182 – Board Staff Submission;
- (g) EB-2011-0182 – Midland Reply Submission; and
- (h) Such further and other documentary evidence as counsel to Midland may advise and this honourable tribunal may permit.

Date: April 24, 2012

Midland Power Utility Corporation
By its Counsel

Borden Ladner Gervais LLP
40 King Street West
Suite 4100
Toronto, ON M5H 3Y5

James C. Sidlofsky
(T) (416) 367-6277
(F) (416) 361-2751
(E) jsidlofsky@blg.com

TO: Ontario Energy Board
P.O. Box 2319
26th. Floor
2300 Yonge Street
Toronto ON M4P 1E4

Tel: (416) 481-1967
Fax: (416) 440-7656

AND TO: Intervenor of Record

TOR01: 4903580

APPENDIX A

Estimated Taxes & Effective Tax Rate on \$108,877 of Adjusted Taxable Income (Note 4)
Taxation Year Ended December 31, 2001

Federal	Totals	\$0 to \$37,808	\$37,809 to \$56,712	\$56,712 to \$108,877
Federal Corporate Tax Rate		13.12%	22.12%	28.12%
Taxable Income	108,877	37,808	18,904	52,165
Federal Corporate Taxes	23,811	4,960	4,182	14,669
Ontario		\$0 to \$52,931	\$52,932 to \$108,877	
Ontario Corporate Tax Rate		6.00%	16.83%	
Taxable Income	108,877	52,931	55,946	
Ontario Corporate Taxes	12,592	3,176	9,416	
Total Federal and Ontario Corporate Taxes	36,402			
Effective Corporate Tax Rate	33.43%			

Tax Rates @ December 31, 2001			
Federal	\$0 to \$37,808	\$37,809 to \$56,712	\$56,712 to \$108,877
Base Rate	38.00%	38.00%	38.00%
Abatement	-10.00%	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%	0.00%
Accelerated Rate Reduction	0.00%	-7.00%	0.00%
General Rate Reduction	0.00%	0.00%	-1.00%
Surtax	1.12%	1.12%	1.12%
	13.12%	22.12%	28.12%
Ontario	\$0 to \$52,931	\$52,932 to \$108,877	
Base Rate	12.50%	12.50%	
Small Business Deduction	-6.50%	0.00%	
Surtax	0.00%	4.33%	
	6.00%	16.83%	

Estimated Taxes & Effective Tax Rate on \$478,348 of Adjusted Taxable Income (Note 4)
Taxation Year Ended December 31, 2002

Federal	Totals	\$0 to \$200,000	\$200,001 to \$300,000	\$300,001 to \$478,348
Federal Corporate Tax Rate		13.12%	22.12%	26.12%
Taxable Income	478,348	200,000	100,000	178,348
Federal Corporate Taxes	94,944	26,240	22,120	46,584
Ontario		\$0 to \$280,000	\$280,000 to \$478,348	
Ontario Corporate Tax Rate		6.00%	16.83%	
Taxable Income	478,348	280,000	198,348	
Ontario Corporate Taxes	50,182	16,800	33,382	
Total Federal and Ontario Corporate Taxes	145,126			
Effective Corporate Tax Rate	30.34%			

Tax Rates @ December 31, 2002			
Federal	\$0 to \$200,000	\$200,001 to \$300,000	\$300,001 to \$478,348
Base Rate	38.00%	38.00%	38.00%
Abatement	-10.00%	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%	0.00%
Accelerated Rate Reduction	0.00%	-7.00%	0.00%
General Rate Reduction	0.00%	0.00%	-3.00%
Surtax	1.12%	1.12%	1.12%
	13.12%	22.12%	26.12%
Ontario	\$0 to \$280,000	\$280,000 to \$478,348	
Base Rate	12.50%	12.50%	
Small Business Deduction	-6.50%	0.00%	
Surtax	0.00%	4.33%	
	6.00%	16.83%	

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Estimated Taxes & Effective Tax Rate on \$478,348 of Adjusted Taxable Income (Note 4)
Taxation Year Ended December 31, 2003

	Totals	0 to \$225,000	\$225,001 to \$300,000	\$300,001 to \$478,348
Federal				
Federal Corporate Tax Rate		13.12%	22.12%	24.12%
Taxable Income	478,348	225,000	75,000	178,348
Federal Corporate Taxes	89,128	29,520	16,590	43,018
Ontario		0 to \$320,000	\$320,001 to \$478,348	
Ontario Corporate Tax Rate		5.50%	17.17%	
Taxable Income	478,348	320,000	158,348	
Ontario Corporate Taxes	44,788	17,600	27,188	
Total Federal and Ontario Corporate Taxes	133,916			
Effective Corporate Tax Rate	28.00%			

Tax Rates @ December 31, 2003			
	0 to \$225,000	\$225,001 to \$300,000	\$300,001 to \$478,348
Federal			
Base Rate	38.00%	38.00%	38.00%
Abatement	-10.00%	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%	0.00%
Accelerated Rate Reduction	0.00%	-7.00%	0.00%
General Rate Reduction	0.00%	0.00%	-5.00%
Surtax	1.12%	1.12%	1.12%
	13.12%	22.12%	24.12%
Ontario	0 to \$320,000	\$320,001 to \$478,348	
Base Rate	12.50%	12.50%	
Small Business Deduction	-7.00%	0.00%	
Surtax	0.00%	4.67%	
	5.50%	17.17%	

Estimated Taxes & Effective Tax Rate on \$478,348 of Adjusted Taxable Income (Note 4)
Taxation Year Ended December 31, 2004

	Totals	0 to \$248,644	\$248,645 to \$478,348	
Federal				
Federal Corporate Tax Rate		13.12%	22.12%	
Taxable Income	478,348	248,644	229,704	
Federal Corporate Taxes	83,433	32,622	50,811	
Ontario		0 to \$400,000	\$400,001 to \$478,348	
Ontario Corporate Tax Rate		5.50%	18.67%	
Taxable Income	478,348	400,000	78,348	
Ontario Corporate Taxes	36,628	22,000	14,628	
Total Federal and Ontario Corporate Taxes	120,060			
Effective Corporate Tax Rate	25.10%			

Tax Rates @ December 31, 2004			
	0 to \$248,644	\$248,645 to \$478,348	
Federal			
Base Rate	38.00%	38.00%	
Abatement	-10.00%	-10.00%	
Small Business Deduction	-16.00%	0.00%	
General/Accelerated Rate Reduction	0.00%	-7.00%	
Surtax	1.12%	1.12%	
	13.12%	22.12%	
Ontario	0 to \$400,000	\$400,001 to \$478,348	
Base Rate	14.00%	14.00%	
Small Business Deduction	-8.50%	0.00%	
Surtax	0.00%	4.67%	
	5.50%	18.67%	

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Estimated Taxes & Effective Tax Rate on \$637,399 of Adjusted Taxable Income (Note 4)
Taxation Year Ended December 31, 2005

		0 to \$300,000	\$300,001 to \$637,399	
Federal	Totals			
Federal Corporate Tax Rate		13.12%	22.12%	
Taxable Income	637,399	300,000	337,399	
Federal Corporate Taxes	113,993	39,360	74,633	
Ontario		0 to \$400,000	\$400,001 to \$637,399	
Ontario Corporate Tax Rate		5.50%	18.67%	
Taxable Income	637,399	400,000	237,399	
Ontario Corporate Taxes	66,322	22,000	44,322	
Total Federal and Ontario Corporate Taxes	180,315			
Effective Corporate Tax Rate	28.29%			

Tax Rates @ December 31, 2005			
	0 to \$300,000	\$300,001 to \$637,399	
Federal			
Base Rate	38.00%	38.00%	
Abatement	-10.00%	-10.00%	
Small Business Deduction	-16.00%	0.00%	
General Rate Reduction	0.00%	-7.00%	
Surtax	1.12%	1.12%	
	13.12%	22.12%	
Ontario	0 to \$400,000	\$400,001 to \$637,399	
Base Rate	14.00%	14.00%	
Small Business Deduction	-8.50%	0.00%	
Surtax	0.00%	4.67%	
	5.50%	18.67%	

Notes and Assumptions:

1) The business limit for the Small Business Deduction at December 31:

Year	Federal *	Provincial*
2001	37,808	52,931 **
2002	200,000	280,000
2003	225,000	320,000
2004	248,644	400,000 ***
2005	300,000	400,000

*We used the actual business limit available in the taxation years as reported on the tax returns

**The business limit available for the small business deduction was reduced in 2001 as a result of this being a short taxation year, starting October 31, 2001 and ending December 31, 2001.

***The business limit available for the small business deduction was reduced in 2004 due to the taxable capital reported in the 2003 taxation year being greater than \$10 million.

2) Federal taxable capital at December 31:

Year	Federal Taxable Capital
2001	8,824,623
2002	***
2003	10,026,983
2004	***
2005	***

**** The taxable capital figures for these taxation years were not available on the tax returns. Since there was no reduction in the small business limit in the 2003, 2005, and 2006 taxation years this would indicate that the taxable capital in 2002, 2004 and 2005 would be less than \$10 million.

3) All taxable income has been treated as Active Business Income.

4) Adjusted taxable income calculations:



EB-2011-0182

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

AND IN THE MATTER OF an application by Midland
Power Utility Corporation for an order or orders
approving or fixing just and reasonable distribution
rates and other charges, to be effective May 1, 2012.

BEFORE: Karen Taylor
Presiding Member

Paula Conboy
Member

DECISION AND ORDER

Introduction

Midland Power Utility Corporation ("Midland"), a licensed distributor of electricity, filed an application with the Ontario Energy Board (the "Board") on November 10, 2011 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Midland charges for electricity distribution, to be effective May 1, 2012.

Midland is one of 77 electricity distributors in Ontario regulated by the Board. The *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* (the "IR Report"), issued on July 14, 2008, establishes a three year plan term for 3rd generation incentive regulation mechanism ("IRM") (i.e., rebasing plus three years). In its October 27, 2010 letter regarding the development of a Renewed Regulatory Framework for Electricity ("RRFE"), the Board announced that it was extending the IRM plan until such time as the RRFE policy initiatives have been

substantially completed. As part of the plan, Midland is one of the electricity distributors that will have its rates adjusted for 2012 on the basis of the IRM process, which provides for a mechanistic and formulaic adjustment to distribution rates and charges between cost of service applications.

To streamline the process for the approval of distribution rates and charges for distributors, the Board issued its IR Report, its *Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* on September 17, 2008 (the "Supplemental Report"), and its *Addendum to the Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* on January 28, 2009 (collectively the "Reports"). Among other things, the Reports contain the relevant guidelines for 2012 rate adjustments for distributors applying for distribution rate adjustments pursuant to the IRM process. On June 22, 2011, the Board issued an update to Chapter 3 of the Board's *Filing Requirements for Transmission and Distribution Applications* (the "Filing Requirements"), which outlines the application filing requirements for IRM applications based on the policies in the Reports.

Notice of Midland's rate application was given through newspaper publication in Midland's service area advising interested parties where the rate application could be viewed and advising how they could intervene in the proceeding or comment on the application. No letters of comment were received. The Vulnerable Energy Consumers Coalition ("VECC") was granted intervenor status in this proceeding. The Board granted VECC eligibility for cost awards in regards to Midland's request for lost revenue adjustment mechanism ("LRAM") recovery. Board staff also participated in the proceeding. The Board proceeded by way of a written hearing.

While the Board has considered the entire record in this proceeding, it has made reference only to such evidence as is necessary to provide context to its findings. The following issues are addressed in this Decision and Order:

- Price Cap Index Adjustment;
- Rural or Remote Electricity Rate Protection Charge;
- Shared Tax Savings Adjustments;
- Retail Transmission Service Rates;
- Review and Disposition of Group 1 Deferral and Variance Account Balances;
- Review and Disposition of Account 1521: Special Purpose Charge;
- Review and Disposition of Lost Revenue Adjustment Mechanism; and

- Review and Disposition of Account 1562: Deferred Payments In Lieu of Taxes.

Price Cap Index Adjustment

As outlined in the Reports, distribution rates under the 3rd Generation IRM are to be adjusted by a price escalator, less a productivity factor (X-factor) of 0.72% and a stretch factor.

On March 13, 2012, the Board announced a price escalator of 2.0% for those distributors under IRM that have a rate year commencing May 1, 2012.

The stretch factors are assigned to distributors based on the results of two benchmarking evaluations to divide the Ontario industry into three efficiency cohorts. In its letter to Licensed Electricity Distributors dated December 1, 2011 the Board assigned Midland to efficiency cohort 2 and a cohort specific stretch factor of 0.4%.

On that basis, the resulting price cap index adjustment is 0.88%. The price cap index adjustment applies to distribution rates (fixed and variable charges) uniformly across customer classes that are not eligible for Rural or Remote Electricity Rate Protection.

The price cap index adjustment will not apply to the following components of delivery rates:

- Rate Riders;
- Rate Adders;
- Low Voltage Service Charges;
- Retail Transmission Service Rates;
- Wholesale Market Service Rate;
- Rural or Remote Rate Protection Charge;
- Standard Supply Service – Administrative Charge;
- Transformation and Primary Metering Allowances;
- Loss Factors;
- Specific Service Charges;
- MicroFIT Service Charges; and
- Retail Service Charges.

Rural or Remote Electricity Rate Protection Charge

On December 21, 2011, the Board issued a Decision with Reasons and Rate Order (EB-2011-0405) establishing the Rural or Remote Electricity Rate Protection ("RRRP") benefit and charge for 2012. The Board amended the RRRP charge to be collected by the Independent Electricity System Operator from the current \$0.0013 per kWh to \$0.0011 per kWh effective May 1, 2012. The draft Tariff of Rates and Charges flowing from this Decision and Order will reflect the new RRRP charge.

Shared Tax Savings Adjustments

In its Supplemental Report, the Board determined that a 50/50 sharing of the impact of currently known legislated tax changes, as applied to the tax level reflected in the Board-approved base rates for a distributor, is appropriate.

The calculated annual tax reduction over the IRM plan term will be allocated to customer rate classes on the basis of the Board-approved base-year distribution revenue. These amounts will be refunded to customers each year of the plan term, over a 12-month period, through a volumetric rate rider using annualized consumption by customer class underlying the Board-approved base rates.

Midland's application identified a total tax savings of \$4,894 resulting in a shared amount of \$2,447 to be refunded to rate payers.

Midland requested that the Board authorize this amount to be recorded in Account 1595 for disposition in a future rate proceeding given that the amount is not significant.

In its submission, Board staff noted that Midland's proposal is consistent with section 2.5 of the Filing Requirements.

In its reply submission, Midland PUC expressed its agreement with Board staff and requested the Board accord 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.

The Board approves a shared tax savings of \$2,447 and finds that as the amount to be returned to ratepayers is not material, Midland is to record the credit in Account 1595 for

disposition in a future rate proceeding.

Retail Transmission Service Rates

Electricity distributors are charged the Ontario Uniform Transmission Rates (“UTRs”) at the wholesale level and subsequently pass these charges on to their distribution customers through the Retail Transmission Service Rates (“RTSRs”). Variance accounts are used to capture timing differences and differences in the rate that a distributor pays for wholesale transmission service compared to the retail rate that the distributor is authorized to charge when billing its customers (i.e. variance Accounts 1584 and 1586).

On June 22, 2011 the Board issued revision 3.0 of the *Guideline G-2008-0001 - Electricity Distribution Retail Transmission Service Rates* (the “RTSR Guideline”). The RTSR Guideline outlines the information that the Board requires electricity distributors to file to adjust their RTSRs for 2012. The RTSR Guideline requires electricity distributors to adjust their RTSRs based on a comparison of historical transmission costs adjusted for the new UTR levels and the revenues generated under existing RTSRs. The objective of resetting the rates is to minimize the prospective balances in Accounts 1584 and 1586. In order to assist electricity distributors in the calculation of the distributors’ specific RTSRs, Board staff provided a filing module.

On December 20, 2011 the Board issued its Rate Order for Hydro One Transmission (EB-2011-0268) which adjusted the UTRs effective January 1, 2012, as shown in the following table:

2012 Uniform Transmission Rates

Network Service Rate	\$3.57 per kW
<u>Connection Service Rates</u>	
Line Connection Service Rate	\$0.80 per kW
Transformation Connection Service Rate	\$1.86 per kW

The Board finds that these 2012 UTRs are to be incorporated into the filing module.

Review and Disposition of Group 1 Deferral and Variance Account Balances

The *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Report Initiative* (the "EDDVAR Report") provides that, during the IRM plan term, the distributor's Group 1 account balances will be reviewed and disposed if the preset disposition threshold of \$0.001 per kWh (debit or credit) is exceeded. The onus is on the distributor to justify why any account balance in excess of the threshold should not be disposed.

Midland's 2010 actual year-end total balance for Group 1 Accounts including interest projected to April 30, 2012 is a credit of \$634,915. This amount results in a total credit claim of \$0.0029 per kWh, which exceeds the preset disposition threshold. Midland proposed to dispose of this credit amount over a one-year period.

In its submission, Board staff noted that the principal amounts 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 submitted that the amounts should be disposed on a final basis. Board staff further submitted that Midland's proposal for a one-year disposition period is in accordance with the EDDVAR Report.

The Board approves, on a final basis, the disposition of a credit balance of \$634,915 as of December 31, 2010, including interest as of April 30, 2012 for Group 1 accounts. These balances are to be disposed over a one year period from May 1, 2012 to April 30, 2013.

The table below identifies the principal and interest amounts approved for disposition for Group 1 Accounts.

Account Name	Account Number	Principal Balance A	Interest Balance B	Total Claim C = A + B
LV Variance Account	1550	-\$74,769	-\$1,460	-\$76,229
RSVA - Wholesale Market Service Charge	1580	-\$238,628	-\$4,659	-\$243,287
RSVA - Retail Transmission Network Charge	1584	\$37,435	\$736	\$38,171
RSVA - Retail Transmission Connection Charge	1586	-\$13,498	-\$277	-\$13,775
RSVA - Power (excluding Global Adjustment)	1588	-\$174,611	-\$3,372	-\$177,983
RSVA - Power – Global Adjustment Sub-Account	1588	-\$158,736	-\$3,076	-\$161,812
Recovery of Regulatory Asset Balances	1590			
Disposition and Recovery of Regulatory Balances (2008)	1595			
Disposition and Recovery of Regulatory Balances (2009)	1595			
Group 1 Total				-\$634,915

For accounting and reporting purposes, the respective balance of each Group 1 account approved for disposition shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 pursuant to the requirements specified in Article 220, Account Descriptions, of the *Accounting Procedures Handbook for Electricity Distributors*. The date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances is effective in rates, which generally is the start of the rate year (e.g. May 1). This entry should be completed on a timely basis to ensure that these adjustments are included in the June 30, 2012 (3rd Quarter) RRR data reported.

Review and Disposition of Account 1521: Special Purpose Charge

The Board authorized Account 1521, Special Purpose Charge Assessment (“SPC”) Variance Account in accordance with Section 8 of *Ontario Regulation 66/10 (Assessments for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs)* (the “SPC Regulation”). Accordingly, any difference between

(a) the amount remitted to the Minister of Finance for the distributor's SPC assessment and (b) the amounts recovered from customers on account of the assessment were to be recorded in "Sub-account 2010 SPC Assessment Variance" of Account 1521.

In accordance with Section 8 of the SPC Regulation, distributors are required to apply no later than April 15, 2012 for an order authorizing the disposition of any residual balance in sub-account 2010 SPC Assessment Variance. The Filing Requirements state the Board's expectation that requests for disposition of this account balance would be heard as part of the proceedings to set rates for the 2012 year.

Midland did not request the disposition of Account 1521 in this application since the sunset date for the recovery of the SPC is April 30, 2011. Midland proposed to defer the disposition of Account 1521 in a future cost-of-service or IRM application.

In response to Board staff interrogatory #3, Midland provided a table identifying the principal balance of Account 1521 as of December 31, 2010, including the amount recovered from customers in 2011, plus projected carrying charges as of April 30, 2012. This total balance is a credit \$26.83.

Board staff notes that the usual practice by the Board is to dispose of audited deferral and variance account balances. Board staff further noted 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 noted 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 submitted 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 also submitted that if the Board decides to dispose of account 1521, the disposition should be on a final basis and account 1521 should be closed.

In its reply submission, Midland agreed with Board staff to dispose of Account 1521 including the amounts recovered from customers in 2011 and carrying charges up to April 30, 2012. However, Midland did not agree with Board Staff that the disposition should be on a final basis and that Account 1521 should be closed. Midland submitted that final disposition should not be based on forecasted recoveries or interest rates, but should be based on actual recoveries and interest rates.

Midland further submitted should the Board decide to dispose of account 1521 that it dispose of \$26.83 and a true-up be completed when Midland files its next cost of service rate application or IRM Application, whichever is first.

The Board approves, on a final basis, the disposition of a credit balance of \$26.83 in Account 1521, representing the balance as of December 31, 2010, plus the amounts recovered in 2011, plus projected carrying charges to April 30, 2012, over a one year period, from May 1, 2012 to April 30, 2013. The Board directs that Account 1521 be closed effective May 1, 2012. The Board notes that these determinations are consistent with other 2012 IRM decisions.

For accounting and reporting purposes, the balance of Account 1521 shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 pursuant to the requirements specified in Article 220, Account Descriptions, of the *Accounting Procedures Handbook for Electricity Distributors*. The date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances is effective in rates, which generally is the start of the rate year (e.g. May 1). This entry should be completed on a timely basis to ensure that these adjustments are included in the June 30, 2012 (3rd Quarter) RRR data reported.

Review and Disposition of Lost Revenue Adjustment Mechanism (“LRAM”)

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.

Midland originally requested the recovery of an LRAM claim of \$76,737.50. In response to Board staff interrogatory #4b and VECC interrogatory #3, Midland updated its LRAM claim to \$69,635.00 to reflect the Ontario Power Authority's (“OPA”) 2010 final results.

Midland's LRAM claim consists of the lost revenues from 2006-2010 CDM programs in 2010 and 2011. The LRAM request can be divided into three parts: (i) persistence of lost revenue for 2006-2009 programs in 2010 and 2011; (ii) 2010 lost revenues from 2010 CDM programs; and (iii) persistence of lost revenues from 2010 CDM programs in 2011. Midland proposed to recover the LRAM claim over a one-year period.

Persisting impacts of 2006-2009 CDM programs

In its submission, Board staff noted that Midland's rates were last rebased in 2009. Board staff further noted that that CDM Guidelines state the following:

“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.”

Board staff also noted that in its Decision and Order in 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 the rebasing.

Board staff noted that 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. Board staff requested that Midland highlight in its reply submission whether the issue of an LRAM application was addressed in its cost of service application.

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

VECC submitted that energy savings from Midland's CDM programs deployed between 2006 and 2009 are not accruable in 2010 and 2011 as savings should have been incorporated in the 2009 load forecast at the time of rebasing.

In its reply submission, Midland noted that its 2009 cost of service 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 for CDM as Midland did not feel enough data was available to accurately represent the effects of CDM savings.

Midland submitted that the effects of CDM activities could not have been accurately forecast in 2009 and therefore were not included in the load forecast.

Midland further submitted that it disagrees with Board staff's and VECC's positions and requests the Board's approval of its LRAM claim for persisting lost revenues from 2006, 2007, 2008, and 2009 CDM programs in 2010 and 2011.

2010 lost revenues

Board staff noted that Midland was under IRM in 2010 and did not have an opportunity to collect these amounts. Board staff supports recovery of lost revenues in 2010 and requested that Midland provide in its reply submission an updated LRAM amount that only includes lost revenues from 2010 CDM programs in 2010.

VECC also supported the approval of lost revenues in 2010 from the impact of CDM programs implemented in 2010, as these saving have not been claimed.

In its reply submission, Midland indicated that the lost revenue from 2010 CDM programs in 2010 is \$11,223.

Input Assumptions for 2009 Every Kilowatt Counts Program

In its submission, VECC noted that for the 2009 Final Every Kilowatt Counts ("EKC") Power Savings Event, 101.42 kWh was used as the input assumption to calculate net annual energy savings for installed CFLs. VECC submitted that this input assumption is outdated and that 46.3 kWh should have been used. VECC however noted that the impact is immaterial.

In its reply submission, Midland agreed with VECC that the changes to the input assumptions for the 2009 EKC program would result in an immaterial change and did not update its LRAM request.

2010 lost revenues persisting into 2011

Board staff submitted that it is premature to consider any lost revenues persisting in 2011 at this time.

VECC submitted that it does not support the approval of 2010 amounts persisting in 2011 noting that LRAM is a retrospective adjustment and that Midland should apply for recovery of 2011 lost revenues in a future proceeding.

In its reply submission, Midland noted that the OPA has identified the 2010 program savings as final, including the persisting savings in 2011. Midland further noted that the 2010 programs do not depend on the Measures and Assumptions lists, therefore providing no reason for Midland to revisit these amounts in the future. Midland requested approval of the persisting savings from 2010 programs in 2011.

The Board approves an LRAM recovery of \$11,223, representing lost revenues from 2010 CDM programs in 2010, as Midland was under IRM for this period and has not otherwise been compensated for lost revenues from these programs in 2010. The Board will not approve an LRAM recovery arising from persistence from 2006 to 2009 CDM programs in 2010 and 2011, as these effects should have been reflected in Midland's 2009 load forecast. The Board notes that in the absence of specific language in the Board's decision in EB-2008-0236 indicating otherwise, there is no reasonable basis to diverge from the 2008 CDM Guidelines. The Board will not approve an LRAM claim arising from persistence of 2010 CDM programs in 2011, as this claim is premature and is contrary to the 2008 CDM Guidelines.

Review and Disposition of Account 1562: Deferred Payments in Lieu of Taxes

In 2001, the Board approved a regulatory payments in lieu of taxes proxy approach for rate applications, coupled with a true-up mechanism filed under the RRR, to account for changes in tax legislation and rules and to true-up between certain proxy amounts used to set rates and the actual amount of taxes paid. The variances resulting from the true-up were tracked in account 1562 Deferred PILs for the period 2001 through April 30, 2006.

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Board commenced a combined proceeding (EB-2008-0381) on its own motion to determine the accuracy of the final account balances with

respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain electricity distributors that filed 2008 and 2009 distribution rate applications.

The Notice in the Combined Proceeding included a statement of the Board's expectation that the decision resulting from the Combined Proceeding would be used to determine the final account balances with respect to Account 1562 Deferred PILs for the remaining distributors. In its decision and order, the Board stated that, "[e]ach 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)."¹

Midland originally filed an application to recover a debit balance of \$173,418 in Account 1562. In response to interrogatories, Midland revised this amount to a debit balance of \$164,412.

In its submission, Board staff raised issues regarding the income tax rates used in the true-up calculations, and the amount related to conservation and demand management ("CDM"). Board staff noted that Midland used the blended maximum income tax rates in each year to calculate the PILs true-up variances. Board staff also noted that in its 2005 SIMPIL² model, Midland did not enter the full actual amount incurred in its 2005 CDM programs in order to calculate the variance when compared with the estimate used in its 2005 rates application.

Board staff submitted that since Midland was not subject to the maximum income tax rates during the tax years 2001 through 2005, Midland should not use these maximum income tax rates to calculate the variances it wants to collect from its ratepayers. Board staff noted that Midland's regulatory rate base as a proxy for taxable paid-up capital was below \$10 million. Based on this tax profile, Board staff was of the view that Midland was eligible for the full small business deduction from 2001 through 2005. Board staff submitted that Midland should use the income tax rates shown in the table entitled "Minimum Income Tax Rates in Percentages" provided in its submission and in the decision in the combined proceeding.³

Midland submitted that it understood that Grimsby's 2012 distribution rates were approved based on a settlement agreement that included a settlement on the issue of the disposition of account 1562. Midland also stated its understanding that the Board

¹ EB-2008-0381 Account 1562 Deferred PILs Combined Proceeding, Decision and Order, p. 28

² Spreadsheet implementation model for payments in lieu of taxes

³ EB-2008-0381 Account 1562 Deferred PILs Combined Proceeding, Decision and Order, p.17.

typically would not approve a settled issue that was not consistent with Board policy. As a result, Midland submitted that it would not be consistent with Board policy to allow Grimsby to use the maximum blended tax rates for the purposes of true-up when they are subject to the small business deduction, but then turn around and suggest that Midland should not use the maximum blended tax rate since they are subject to the small business deduction.

Midland submitted that the maximum blended tax rate should be used to be consistent with all Board Decisions issued to date.⁴ However, in the event the Board decides that the blended maximum income tax rates are not to be used in Midland's case, Midland submitted that the tax rates listed in the table below be used for the purposes of true-up.

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

Midland explained that for 2001 and 2002, the tax rates are the minimum tax rates. For 2003 to 2005, the tax rates are the effective income tax rates based on Midland's incurred taxable regulatory income. Midland did not provide an explanation of how it calculated these income tax rates, or why these tax rates would have been applicable to its tax position during the period under review.

Midland calculated that, under the alternative scenarios created by using the income tax rates shown in the preceding table, it would owe its customers approximately \$246,000 including interest up to April 30, 2012. Midland submitted that if the Board ordered this refund to ratepayers over one year, this would cause a significant impact on the level of operational cash for Midland and could cause financial hardship for the utility. Midland requested that since this true-up amount occurred over a five year period from 2001 to 2005, it should be paid back to customers over a five year period.

With respect to the second issue, Board staff submitted that the CDM amount of \$72,370.50 which was deducted from revenues in the 2005 audited financial statements should be added to the \$4,000 already entered in the 2005 SIMPIL in order to determine the correct true-up amount. Midland agreed with Board staff on the treatment in SIMPIL of the \$72,370.50, and Midland submitted that 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 1562.⁵

⁴ Midland, Reply, February 24, 2012, page 11.

⁵ Midland, Reply, February 24, 2012, page 5.

The Board does not agree with Midland's interpretation of the decision in the PILS Combined Proceeding (EB-2008-0381) and notes that this decision specifically states that, "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 submission" and that two taxation rates tables appeared on page 17 of that decision. It is not determinative that the utilities considered in the Combined Proceeding were indeed subject to the maximum income tax rates.

The Board notes that Midland was not subject to the maximum taxation rates over the 2001 to 2005 period and that it was also eligible for the full small business deduction. The Board is not persuaded that the alternative taxation rates proposed by Midland should be used, as the evidentiary basis to support the proposed tax rates in 2003, 2004 and 2005 was not provided and the tax rates were not subject to discovery, as Midland filed these alternative tax rates in its reply submission. Finally, the Board is not convinced that the facts in the Grimsby proceeding are relevant to the facts in this case, particularly as elements of that case were subject to a settlement proposal.

The Board agrees with the submission of Board staff that Midland should use the income tax rates shown in the table entitled "Minimum Income Tax Rates in Percentages" provided in Board staff's submission based on in the Board's decision in the PILS Combined Proceeding on page 17.

The Board notes that Midland agrees with Board staff with regard to the CDM issue and has undertaken to file all necessary revisions to the models to adjust for this issue.

The Board therefore directs Midland to enter (i.e., over-ride the formulas) in the SIMPIL models for the years 2001 to 2005 on sheet TAXCALC the income tax rates as shown in the table "Minimum Income Tax Rates in Percentages" in the decision of the Board in the combined proceeding, update its continuity schedule, and re-file the 2001 to 2005 active Excel SIMPIL models to support the entries in the continuity schedule.

Subject to the filing of this information, the Board approves a one-year disposition period, May 1, 2012 to April 30, 2013. The Board is not convinced that the five-year disposition period appropriately aligns the issue of intergenerational equity and rate volatility, particularly when credit balances are to be repaid to customers. Moreover, Midland has provided no evidence whatsoever to support its claim that a shorter disposition period "could move the utility in the direction of financial hardship".

For accounting and reporting purposes, the balance of Account 1562 shall be transferred to the applicable principal and interest carrying charge sub-accounts of Account 1595 pursuant to the requirements specified in Article 220, Account Descriptions, of the Accounting Procedures Handbook for Electricity Distributors. The date of the journal entry to transfer the approved account balances to the sub-accounts of Account 1595 is the date on which disposition of the balances is effective in rates, which generally is the start of the rate year (e.g. May 1). This entry should be completed on a timely basis to ensure that these adjustments are included in the June 30, 2012 RRR data to be reported to the Board in August.

IMPLEMENTATION

The Board has made findings in this Decision which change the 2012 distribution rates from those proposed by Midland.

The Board expects Midland to file a draft Rate Order, including all relevant calculations showing the impact of this Decision on Midland's determination of the final rates. Supporting documentation shall include, but not be limited to, filing completed versions of the 2012 IRM Rate Generator model, updated SIMPIL models and continuity tables to support the claim for disposition of account 1562 Deferred PILs and LRAM calculations showing the derivation of the final rate riders to recover the approved LRAM amount.

A Rate Order will be issued after the steps set out below are completed.

THE BOARD ORDERS THAT:

1. Midland shall file with the Board, and shall also forward to intervenors, a draft Rate Order that includes revised models in Microsoft Excel format and a proposed Tariff of Rates and Charges reflecting the Board's findings in this Decision and Order within 7 days of the date of issuance of this Decision and Order.
2. Board staff and intervenors shall file any comments on the draft Rate Order including the revised models and proposed Tariff of Rates and Charges with the Board and forward to Midland within 7 days of the date of filing of the draft

Rate Order.

3. Midland shall file with the Board and forward to intervenors responses to any comments on its draft Rate Order including the revised models and proposed Tariff of Rates and Charges within 4 days of the date of receipt of intervenor comments.

Cost Awards

The Board will issue a separate decision on cost awards once the following steps are completed:

1. VECC shall submit their cost claims no later than **7 days** from the date of issuance of the final Rate Order.
2. Midland shall file with the Board and forward to VECC any objections to the claimed costs within **21 days** from the date of issuance of the final Rate Order.
3. VECC shall file with the Board and forward to Midland any responses to any objections for cost claims within **28 days** from the date of issuance of the final Rate Order.
4. Midland shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

All filings to the Board must quote file number **EB-2011-0182**, be made through the Board's web portal at, www.errr.ontarioenergyboard.ca and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available parties may email their document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 2 paper copies.

DATED at Toronto, April 4, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary



EB-2011-0182

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

AND IN THE MATTER OF an application by Midland
Power Utility Corporation for an order or orders approving
or fixing just and reasonable distribution rates and other
charges, to be effective May 1, 2012.

BEFORE: Karen Taylor
Presiding Member

Paula Conboy
Member

FINAL RATE ORDER

Introduction

Midland Power Utility Corporation ("Midland"), a licensed distributor of electricity, filed an application with the Ontario Energy Board (the "Board") on November 10, 2011 for permission to change its delivery charges beginning May 1, 2012. The application was filed under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), under the Board's guidelines for 3rd Generation Incentive Regulation Mechanism ("IRM") which provides for a mechanistic and formulaic adjustment to distribution rates between cost of service applications.

In its Decision and Order ("the Decision") on the application issued on April 4, 2012, the Board ordered Midland to file a draft Rate Order that includes revised models in Microsoft Excel format and a proposed Tariff of Rates and Charges reflecting the

Board's findings in the Decision within seven days from the date of issuance of the Decision.

Midland filed its draft Rate Order, revised models, supporting documentation and draft Tariff of Rates and Charges on April 13, 2012.

On April 17, 2012, Board staff submitted a letter indicating that it has reviewed the draft Rate Order, including the models and draft Tariff of Rates and Charges. Board staff had no concerns with the materials filed.

On April 18, 2012, VECC noted in its comments that in its reply submission dated February 24, 2012, Midland calculated the 2012 Lost Revenue Adjustment Mechanism ("LRAM") rate rider for the residential customer class as \$0.00005/kWh. However, the draft Tariff of Rates and Charges reflects an LRAM rate rider of \$0.0001/kWh. VECC submitted that the Tariff of Rates and Charges should reflect an LRAM Rate Rider of \$0.00005/kWh for the residential customer class. VECC further submitted that if Midland's billing system cannot accommodate a rate rider to five decimal points, the recovery period should be reduced from one year (12 months) to six months to reflect the Board approved LRAM recovery from the residential customer class.

On April 18, 2012, Midland noted in its reply submission, that its billing software provides for a five decimal point calculation and accordingly, requested the Board to record the LRAM rate rider as \$0.00005/kWh for the residential class over one year.

The Board has reviewed the information provided by Midland and the comments submitted by Board staff and VECC. The Board notes that the standard practice of the Board is to list all rate riders to four decimal places, unless there is sufficient justification to defer from this standard and that the Board has approved such a deviation. The Board accepts the use of five decimal places for the residential LRAM rate rider given that the Board has approved this approach in instances where the use of four decimal places will result in under/over recovery of a Board approved amount. The Board further notes that unlike deferral and variance accounts, there is no true up for residual LRAM.

The Board is satisfied that the rate models and the Tariff of Rates and Charges accurately reflect the Board's Decision.

With this Rate Order, the Board is providing Midland with final rate models and a final Tariff of Rates and Charges (Appendix "A") that reflects the elements of the Decision.

THE BOARD ORDERS THAT:

1. The Tariff of Rates and Charges set out in Appendix A of this Order will become final effective May 1, 2012, and will apply to electricity consumed or estimated to have been consumed on and after May 1, 2012. Midland shall notify its customers of the rate changes no later than with the first bill reflecting the new rates.

DATED at Toronto, April 20, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

To Rate Order

Final Tariff of Rates and Charges

Board File No: EB-2011-0182

DATED April 20, 2012

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

EB-2011-0182

RESIDENTIAL SERVICE CLASSIFICATION

This classification refers to an account where energy is supplied to customers residing in residential dwelling units. Energy is generally supplied as a single phase, 3-wire, 60-Hertz, having a nominal voltage of 120/240 Volts and having only one Delivery Point per dwelling. For the purposes of calculating customer connection fees, the Basic Connection for Residential customers is defined as 100 amp 120/240 volt overhead service. A residential building is supplied at one service voltage per land parcel. Street Townhouses and Condominiums requiring centralization bulk metering are covered under General Service Classification. Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge	\$	11.78
Distribution Volumetric Rate	\$/kWh	0.0196
Low Voltage Service Rate	\$/kWh	0.0015
Rate Rider for Global Adjustment Sub-Account Disposition (2010) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kWh	0.0001
Rate Rider for Global Adjustment Sub-Account Disposition (2011) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kWh	0.0013
Rate Rider for Global Adjustment Sub-Account Disposition (2012) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kWh	(0.0012)
Rate Rider for Deferral/Variance Account Disposition (2012) – effective until April 30, 2013	\$/kWh	(0.0070)
Rate Rider for Lost Revenue Adjustment Mechanism (LRAM) Recovery – effective until April 30, 2013	\$/kWh	0.00005
Retail Transmission Rate – Network Service Rate	\$/kWh	0.0057
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kWh	0.0047

MONTHLY RATES AND CHARGES – Regulatory Component

Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0011
Standard Supply Service – Administrative Charge (if applicable)	\$	0.25

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

**This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors**

EB-2011-0182

GENERAL SERVICE LESS THAN 50 kW SERVICE CLASSIFICATION

This classification refers to the supply of electrical energy to General Service Buildings requiring a connection with a connected load less than 50 kW, and, Townhouses and Condominiums that require centralized bulk metering. General Service buildings are defined as buildings that are used for purposes other than single-family dwellings. A General Service building is supplied at one voltage per land parcel. Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge	\$	14.86
Distribution Volumetric Rate	\$/kWh	0.0155
Low Voltage Service Rate	\$/kWh	0.0013
Rate Rider for Global Adjustment Sub-Account Disposition (2010) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kWh	0.0001
Rate Rider for Global Adjustment Sub-Account Disposition (2011) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kWh	0.0013
Rate Rider for Global Adjustment Sub-Account Disposition (2012) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kWh	(0.0012)
Rate Rider for Deferral/Variance Account Disposition (2012) – effective until April 30, 2013	\$/kWh	(0.0048)
Rate Rider for Lost Revenue Adjustment Mechanism (LRAM) Recovery – effective until April 30, 2013	\$/kWh	0.0002
Retail Transmission Rate – Network Service Rate	\$/kWh	0.0052
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kWh	0.0043

MONTHLY RATES AND CHARGES – Regulatory Component

Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0011
Standard Supply Service – Administrative Charge (if applicable)	\$	0.25

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

EB-2011-0182

GENERAL SERVICE 50 to 4,999 kW SERVICE CLASSIFICATION

This classification refers to the supply of electrical energy to General Service customers requiring a connection with a connected load equal to or greater than 50 kW and less than 5,000 kW. A General Service building is supplied at one service voltage per land parcel. Depending on the location of the building Primary supplies to transformers and Customer owned Sub-Stations will be one of the following as determined by the Distributor:

- 2,400/4,160 volts 3 Phase 4Wire
- 4,800/8,320 volts 3 Phase 4 Wire
- 7,200/12,400 volts 3 Phase 4 Wire
- 8,000/13,800 volts 3 Phase 4 Wire
- 16,000/27,600 volts 3 Phase 4 Wire
- 44,000 Volts 3 Phase 3 Wire

Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge	\$	58.48
Distribution Volumetric Rate	\$/kW	2.9954
Low Voltage Service Rate	\$/kW	0.5012
Rate Rider for Global Adjustment Sub-Account Disposition (2010 recalculated) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kW	0.0432
Rate Rider for Global Adjustment Sub-Account Disposition (2011) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kW	0.4903
Rate Rider for Global Adjustment Sub-Account Disposition (2012) – effective until April 30, 2013		
Applicable only for Non-RPP Customers	\$/kW	(0.4922)
Rate Rider for Deferral/Variance Account Disposition (2012) – effective until April 30, 2013	\$/kW	(1.3786)
Rate Rider for Lost Revenue Adjustment Mechanism (LRAM) Recovery – effective until April 30, 2013	\$/kW	0.0093
Retail Transmission Rate – Network Service Rate	\$/kW	2.1368
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.6983

MONTHLY RATES AND CHARGES – Regulatory Component

Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0011
Standard Supply Service – Administrative Charge (if applicable)	\$	0.25

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

**This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors**

EB-2011-0182

UNMETERED SCATTERED LOAD SERVICE CLASSIFICATION

This classification refers to an account taking electricity at 750 volts or less whose monthly average peak demand is less than, or is forecast to be less than, 50 kW and the consumption is unmetered. Such connections include cable TV power packs, bus shelters, telephone booths, traffic lights, railway crossings, etc. The customer will provide detailed manufacturer information/documentation with regard to electrical demand/consumption of the proposed unmetered load. Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge (per customer)	\$	24.74
Distribution Volumetric Rate	\$/kWh	0.0266
Low Voltage Service Rate	\$/kWh	0.0013
Rate Rider for Deferral/Variance Account Disposition (2012) – effective until April 30, 2013	\$/kWh	(0.0066)
Retail Transmission Rate – Network Service Rate	\$/kWh	0.0052
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kWh	0.0043

MONTHLY RATES AND CHARGES – Regulatory Component

Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0011
Standard Supply Service – Administrative Charge (if applicable)	\$	0.25

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

**This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors**

EB-2011-0182

SENTINEL LIGHTING SERVICE CLASSIFICATION

This classification refers to accounts that are an unmetered lighting load supplied to a sentinel light. Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge (per connection)	\$	21.71
Distribution Volumetric Rate	\$/kW	38.4425
Low Voltage Service Rate	\$/kW	0.3864
Rate Rider for Deferral/Variance Account Disposition (2012) – effective until April 30, 2013	\$/kW	(15.9446)
Retail Transmission Rate – Network Service Rate	\$/kW	1.6000
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.2841

MONTHLY RATES AND CHARGES – Regulatory Component

Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0011
Standard Supply Service – Administrative Charge (if applicable)	\$	0.25

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

**This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors**

EB-2011-0182

STREET LIGHTING SERVICE CLASSIFICATION

This classification applies to an account for roadway lighting with a Municipality, Regional Municipality, Ministry of Transportation and private roadway lighting operation, controlled by photo cells. The consumption for these customers will be based on the calculated connected load times the required lighting times established in the approved OEB street lighting load shape template. Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge (per connection)	\$	3.73
Distribution Volumetric Rate	\$/kW	8.6265
Low Voltage Service Rate	\$/kW	0.3873
Rate Rider for Deferral/Variance Account Disposition (2012) – effective until April 30, 2013	\$/kW	(3.7220)
Retail Transmission Rate – Network Service Rate	\$/kW	1.6116
Retail Transmission Rate – Line and Transformation Connection Service Rate	\$/kW	1.3129

MONTHLY RATES AND CHARGES – Regulatory Component

Wholesale Market Service Rate	\$/kWh	0.0052
Rural Rate Protection Charge	\$/kWh	0.0011
Standard Supply Service – Administrative Charge (if applicable)	\$	0.25

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

**This schedule supersedes and replaces all previously
approved schedules of Rates, Charges and Loss Factors**

EB-2011-0182

microFIT GENERATOR SERVICE CLASSIFICATION

This classification applies to an electricity generation facility contracted under the Ontario Power Authority's microFIT program and connected to the distributor's distribution system. Further servicing details are available in the distributor's Conditions of Service.

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

MONTHLY RATES AND CHARGES – Delivery Component

Service Charge	\$	5.25
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Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

EB-2011-0182

ALLOWANCES

Transformer Allowance for Ownership - per kW of billing demand/month	\$/kW	(0.60)
Primary Metering Allowance for transformer losses – applied to measured demand and energy	%	(1.00)

SPECIFIC SERVICE CHARGES

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

Customer Administration		
Notification Charge	\$	15.00
Account history	\$	15.00
Returned Cheque charge (plus bank charges)	\$	15.00
Legal letter charge	\$	15.00
Account set up charge/change of occupancy charge (plus credit agency costs if applicable)	\$	30.00
Non-Payment of Account		
Late Payment – per month	%	1.50
Late Payment - per annum	%	19.56
Disconnect/Reconnect at meter – during regular hours	\$	65.00
Disconnect/Reconnect at meter – after regular hours	\$	185.00
Disconnect/Reconnect at pole – during regular hours	\$	185.00
Disconnect/Reconnect at pole – after regular hours	\$	415.00
Specific Charge for Access to Power Poles \$/pole/year	\$	22.35
Install/Remove load control device – during regular hours	\$	65.00
Install/Remove load control device – after regular hours	\$	185.00
Temporary service install & remove – overhead – no transformer	\$	500.00
Temporary service install & remove – underground – no transformer	\$	300.00

Midland Power Utility Corporation

TARIFF OF RATES AND CHARGES

Effective and Implementation Date May 1, 2012

This schedule supersedes and replaces all previously approved schedules of Rates, Charges and Loss Factors

EB-2011-0182

RETAIL SERVICE CHARGES (if applicable)

APPLICATION

The application of these rates and charges shall be in accordance with the Licence of the Distributor and any Code or Order of the Board, and amendments thereto as approved by the Board, which may be applicable to the administration of this schedule.

No rates and charges for the distribution of electricity and charges to meet the costs of any work or service done or furnished for the purpose of the distribution of electricity shall be made except as permitted by this schedule, unless required by the Distributor's Licence or a Code or Order of the Board, and amendments thereto as approved by the Board, or as specified herein.

Unless specifically noted, this schedule does not contain any charges for the electricity commodity, be it under the Regulated Price Plan, a contract with a retailer or the wholesale market price, as applicable.

It should be noted that this schedule does not list any charges, assessments or credits that are required by law to be invoiced by a distributor and that are not subject to Board approval, such as the Debt Retirement Charge, the Global Adjustment, the Ontario Clean Energy Benefit and the HST.

Retail Service Charges refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity

One-time charge, per retailer, to establish the service agreement between the distributor and the retailer	\$	100.00
Monthly Fixed Charge, per retailer	\$	20.00
Monthly Variable Charge, per customer, per retailer	\$/cust.	0.50
Distributor-consolidated billing monthly charge, per customer, per retailer	\$/cust.	0.30
Retailer-consolidated billing monthly credit, per customer, per retailer	\$/cust.	(0.30)
Service Transaction Requests (STR)		
Request fee, per request, applied to the requesting party	\$	0.25
Processing fee, per request, applied to the requesting party	\$	0.50
Request for customer information as outlined in Section 10.6.3 and Chapter 11 of the Retail Settlement Code directly to retailers and customers, if not delivered electronically through the Electronic Business Transaction (EBT) system, applied to the requesting party		
Up to twice a year		no charge
More than twice a year, per request (plus incremental delivery costs)	\$	2.00

LOSS FACTORS

If the distributor is not capable of prorating changed loss factors jointly with distribution rates, the revised loss factors will be implemented upon the first subsequent billing for each billing cycle.

Total Loss Factor – Secondary Metered Customer < 5,000 kW	1.0651
Total Loss Factor – Secondary Metered Customer > 5,000 kW	N/A
Total Loss Factor – Primary Metered Customer < 5,000 kW	1.0545
Total Loss Factor – Primary Metered Customer > 5,000 kW	N/A



any balance in a future Cost of Service or IRM application once the continuity schedule is completed for the 2011 year.

Sheet 9 of – 2012 IRM3 RATE GENERATOR MODEL: 2012 Continuity Schedule Deferral and Variance Accounts – and – TAB 5 - PILS (Payments in Lieu of Taxes) – Account #1562 Disposition

Overview

Midland has reviewed the Decision and Order dated June 24, 2011 under which EnWin Utilities Ltd, Halton Hills Hydro Inc. and Barrie Hydro Distribution Inc. provided evidence on the disposition of account 1562. Midland has also reviewed the letter from the Managing Director, Applications & Regulatory Audit dated September 13, 2011 which provides direction to LDCs on the process required to dispose of the balance contained in account 1562.

With respect to account #1562, Midland would advise the variance from the RRR filing is due to the difference between the methodology approved in the combined proceeding as compared with the methodology used by Midland during the period of 2001 to 2005. In particular, inclusion of the regulatory asset balances in the PILs models resulted in overstated tax refunds owing to customers. The regulatory asset balances represent a timing difference in the payment of PILS only and should not have been taken into account when completing the SIMPIL models. This erroneous recording has been corrected in the attached documentation. Midland will update the RRR filing once the OEB has made its final Decision and Order in this proceeding.

In addition, Midland has incorporated the maximum tax rate in the models. In support of this methodology, Midland has 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 effect, the distributor may expect that the determination of the final account balance will be handled expeditiously and in a largely administrative manner.

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

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

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

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

Using the maximum tax rates is consistent with KPMG's view and the views of other parties working on this issue. A review of the Halton Hills, Barrie and EnWin models indicate they all used the Maximum Tax rate even when their taxable income was at zero in some cases. In addition, a discussion with Halton Hills staff involved with the 1562 proceeding indicates it would be consistent with the outcome of the proceeding to assume the maximum tax shown on page 17 of the Board's Decision.

The information requested by the Board to support Midland's disposition amount is included in Tab 5 of this rate application and includes the following appendices related to the disposition of Account 1562:



Appendix A	1562 Summary Continuity Schedule with Interest Improvement
Appendix B	2002 Approved RAM Model
Appendix C	2001 Approved SIMPIL Model
Appendix D	2002 Approved SIMPIL Model
Appendix E	2002 OEB Decision
Appendix F	2004 Approved RAM Model
Appendix G	2004 Approved PILS – Sheet 7 of RAM Model
Appendix H	2004 OEB Decision
Appendix I	2005 Approved RAM Model
Appendix J	2005 Approved SIMPIL Model
Appendix K	2005 OEB Decision
Appendix L	2001 SIMPIL True-up Model
Appendix M	2002 SIMPIL True-up Model
Appendix N	2003 SIMPIL True-up Model
Appendix O	2004 SIMPIL True-up Model
Appendix P	2005 SIMPIL True-up Model
Appendix Q	2001 Financial Statements, Tax Returns and Assessment
Appendix R	2002 Financial Statements, Tax Returns and Assessment
Appendix S	2003 Financial Statements, Tax Returns and Assessment
Appendix T	2004 Financial Statements, Tax Returns and Assessment
Appendix U	2005 Financial Statements, Tax Returns and Assessment
Appendix V	2006 Financial Statements, Tax Returns and Assessment
Appendix W	2002 PILS Recovered
Appendix X	2003 PILS Recovered
Appendix Y	2004 PILS Recovered
Appendix Z	2005 PILS Recovered
Appendix AA	2006 PILS Recovered

Midland prepared revised models for payments in lieu of taxes (SIMPIL) to calculate the balance in account 1562 deferred PILS. In this IRM application, Midland has incorporated the models used in the Halton Hills Hydro Inc and Hydro One Brampton Networks Inc applications for disposition.

In conjunction with the Appendices to this IRM Application, Midland PUC would submit that:

- Regulatory assets and liabilities are excluded from the calculation of the balance that trues up to ratepayers
- There is no interest clawback pertaining to this IRM Application



- Midland has incorporated the maximum tax rates of 40.62%, 38.62% and 36.12% into the SIMPIL models as prescribed by the Decision and Order dated June 24, 2011 referred to above.
- Midland has chosen a materiality threshold of zero
- The final tax return numbers for each year are used in the SIMPIL models
- There are no depreciation adjustments due to reallocations
- There is a CDM deduction of \$40,000 included in the SIMPIL model
- For the year 2002, Midland's financial records include two year ends – one at April 30, 2002 and one at December 31, 2002 due to the amalgamation of three companies whose beneficial ownership is the Corporation of the Town of Midland. The three companies, Midland Power Utility Corporation, Community One-Lan Solutions Inc. and Mid-Ontario Energy Services Inc., were amalgamated under the name Midland Power Utility Corporation. This amalgamation did not result in any changes to the rate base or changes to the 1999 return or MARR. Consequently, the PILS presented in this IRM Application includes a consolidation of the two year ends – Midland Power Utility Corporation as at April 30, 2002 and Midland Power Utility Corporation as at December 31, 2002. An additional sheet is inserted into the SIMPIL 2002 PILS Model included in this Application entitled "Consolidated Apr&Dec Year End". The MAAD application under Section 86 was approved at the time the new licence was approved on November 26, 2003.

Disposition

Midland PUC is applying to recover a debit balance of \$173,417.54 from customers as at April 30, 2012, as set out in this IRM Application and as provided on Sheet 9 – Continuity Schedule Deferral Variance Accounts of the IRM Rate Generator model. This amount includes principal of \$125,178.34 and interest up to April 30, 2012 of \$48,239.20.

Allocation to Customer Classes

Midland is proposing to allocate the recovery of account #1562 to customer classes based on the billing determinants and distribution revenues used in the 2009 Cost of Service Application, being the last Board Approved volumetric forecast as shown on Sheet 10 Billing Determinants for Deferral Variance Accounts and Sheet 11 Cost allocation Deferral Variance Accounts. Midland is requesting recovery over one year – May 1, 2012 to April 30, 2013.



Continuity Schedule

The following Continuity Schedule provides the summary of the Board Approved PILS amounts for the Rate Adjustment Models, adjustments from the annual SIMPIL models, PILS billed to customers and related carrying charges at the Board prescribed interest rates for the period October 1, 2001 to December 31, 2006 of \$157,642. Interest from January 1, 2007 to April 30, 2012 totals \$15,775.60 for a combined principal and interest recovery of \$173,417.54 as at April 30, 2012.

		10/1/2001	1/1/2002	1/1/2003	1/1/2004	1/1/2005	1/1/2006	
Year start:		10/1/2001	1/1/2002	1/1/2003	1/1/2004	1/1/2005	1/1/2006	
Year end:		12/31/2001	12/31/2002	12/31/2003	12/31/2004	12/31/2005	4/30/2006	Total
Opening balance:	=	0	59,152	118,412	149,854	97,250	93,385	0
Board-approved PILs tax proxy from Decisions (1)	+/-	58,797	257,376	316,173	272,075	64,344	81,302	1,050,067
PILs proxy from April 1, 2005 - input 9/12 of amount						182,930		182,930
True-up Variance Adjustment Q4, 2001 (2)	+/-		0					0
True-up Variance Adjustment (3)	+/-			-1,417	-41,358	559	14,796	-27,420
Deferral Account Variance Adjustment Q4, 2001 (4)			11,717			0		11,717
Deferral Account Variance Adjustment (5)	+/-			34,441	18,541	13,248	79,320	145,549
Adjustments to reported prior years' variances (6)	+/-						0	0
Carrying charges (7)	+/-	355	8,503	8,091	7,668	3,548	4,298	32,464
PILs billed to (collected from) customers (8)	-	0	-218,337	-325,846	-309,530	-268,494	-115,458	-1,237,665
Ending balance: # 1562		59,152	118,412	149,854	97,250	93,385	157,642	157,642

Tab 2 - 2012 IRM3 RATE GENERATOR MODEL (continued)

Sheet 14 – Proposed Rate Riders

Midland is therefore requesting a rate rider for the Deferral Variance Account Disposition and for the Global Adjustment Sub-Account disposition for 2012 with sunset dates of April 30, 2013, both of which riders represent credits to the customer.



EB-2008-0381

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

AND IN THE MATTER OF a proceeding commenced by the
Ontario Energy Board on its own motion to determine the
accuracy of the final account balances with respect to
Account 1562 Deferred Payments in Lieu of Taxes (for the
period October 1, 2001 to April 30, 2006) for certain 2008
and 2009 distribution rate applications before the Board.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Vice Chair and Member

DECISION AND ORDER

BACKGROUND

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a combined proceeding on its own motion to determine the accuracy of the final account balances with respect to Account 1562 Deferred Payments in Lieu of Taxes ("PILs") (for the period October 1, 2001 to April 30, 2006) for certain electricity distributors that filed 2008 and 2009 distribution rate applications. The Board subsequently determined that ENWIN Utilities Ltd. ("ENWIN"), Halton Hills Hydro Inc. ("Halton Hills") and Barrie Hydro Distribution Inc. ("Barrie") should provide their specific evidence on the disposition of account 1562 (collectively, the "Applicants"). The Board had announced its intention to hold such a proceeding in a letter to all distributors issued on March 3, 2008 and at that time assigned file number EB-2007-0820. File number EB-2008-0381 was assigned to this combined proceeding when it commenced on November 28, 2008.

The Notice of the combined proceeding included a statement of the Board's expectation that the decision resulting from the combined proceeding would be used to determine the final account balances with respect to account 1562 Deferred PILs for the remaining distributors. The process for the disposition of account 1562 Deferred PILs for the remaining distributors is set out at the end of this decision.

Board staff issued a discussion paper on August 20, 2008 summarizing the principles established by the Board to date with respect to the determination of the account 1562 balances. The discussion paper also identified matters that Board staff believed were outstanding and required clarification.

A series of procedural steps, including the identification of issues, the submission of evidence, hearing of motions, technical conferences and interrogatories have extended over many months. During that process, the Board decided to order the three selected Applicants to submit evidence and that all other originally named distributors would become intervenors. A chronology of the procedural arrangements of this hearing is attached in Appendix A.

An issues list was approved for the proceeding. The parties to the proceeding met in an attempt to reach agreement on some or all of the issues in the proceeding. A proposed Settlement Agreement was filed with the Board on September 30, 2010 (the "Settlement Agreement"). The parties reached complete settlement on 17 issues, incomplete settlement on 2 issues, and no settlement on 3 issues.

In its Decision and Procedural Order No. 9 dated December 23, 2010, the Board accepted the Settlement Agreement with the exception of one issue related to the retention of account 1562 and set out a series of procedural steps to deal with the unsettled issues. The Settlement Agreement is attached as Appendix B and Decision and Procedural Order No. 9 is attached as Appendix C.

The Board recognizes that this has been a very lengthy and complicated proceeding and appreciates the degree to which the participants have assisted the Board in achieving its broader objective.

The Board has considered all of the evidence and submissions in the proceeding but has summarized the evidence and positions of the parties only to the extent necessary to clarify the issues on which the Board has made determinations.

The following issues were unsettled:

- Issue #3: Has the distributor correctly applied the true up variance concepts established by the Board's guidance?
- Issue #4: How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?
- Issue #8: How should the materiality threshold be applied to determine which amounts should be trued up?
- Issue #9: What are the correct tax rates to use in the true-up variance calculations?
- Issue #10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?
- Issue #11: Should the SIMPIL true-up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

Each issue is addressed in turn.

Issue #3: Has the distributor correctly applied the true up variance concepts established by the Board's guidance?

One part of this issue was settled, while the remainder was unsettled.

The parties agreed that the Board's methodology, in place at the relevant times, includes correcting all input errors. The parties agreed that the Applicants have corrected all identified input errors.

However, the parties did not agree on the scope and interpretation of this issue, except for the correction of input errors. Specifically, the parties disagreed on whether:

- 1) The issue includes both a determination of what true-up variance concepts were established by the Board's methodology, and then a review of the Applicants' implementation of the Board's methodology; or
- 2) The issue exclusively requires a determination of whether the Applicants properly implemented the Board's methodology.

The parties disagreed on the appropriateness of making any adjustments to the spreadsheet implementation model for payments in lieu of taxes ("SIMPIL"). Some parties took the position that certain functions of the models should be corrected, on the basis that they are inconsistent with the Board's methodology and therefore incorrect. Others took the position that the models themselves are articulations of the Board's methodology, and that to adjust the models would be to change the Board's methodology that was in place at the relevant time.

Submission by Board staff

Board staff submitted that a cell reference in the 2003 SIMPIL model that selected an unintended income tax rate and flowed through the true-up calculations constitutes an error. Board staff submitted that the error in the model that caused the wrong tax rate to be selected for 2003 is not part of the Board's methodology and that distributors had the responsibility to ensure that the inputs into the SIMPIL models were taken directly from the tax returns, the Board decisions for the relevant applications, and the supporting PILs filing models.

Board staff submitted its view that the PILs liability and related true-up entries to account 1562 should be calculated based on the correct tax rates for the relevant years since accounting for changes in tax legislation and rules has been a feature of the PILs and SIMPIL methodologies since inception.

In response to Board staff interrogatories the Applicants agreed that the maximum blended tax rate for 2002 was 38.62% and 36.62% for 2003.

Joint Submissions by the Applicants

The Applicants submitted that the correct interpretation of the issue is that it involves only a determination of a narrow question of whether the Applicants properly implemented the Board's methodology. The Applicants submitted that this narrow interpretation is consistent with the Board's December 18, 2009 Decision on this matter:

Board direction in the form of letters from the Board Secretary, the Accounting Procedures Handbook and the associated FAQ, and the SIMPIL models all provided direction to distributors. The Board finds that it would be inappropriate to

review those changes now, or the methodology itself, with a view to making retrospective changes. While those instruments were not the result of a rates proceeding, they were all sanctioned by the Board and formed the directions under which distributors were expected to operate....The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been.

The Applicants submitted that taking an alternative, broader interpretation of the issue would create a whole new level to the proceeding requiring submissions to define “what true-up variance concepts were established by the Board’s methodology”, possibly filings and interrogatories to develop the evidentiary record in relation to those newly defined concepts and further oral or written procedures.

The Applicants submitted that its narrower interpretation of Issue #3 would be consistent with existing Board practice and that once the true-up variance concepts are resolved through the other issues, this issue provides the basis to ensure that the Applicants’ data entry, use of the SIMPIL models and continuity schedules are correct. The Applicants contended that this is similar to rate proceedings in which the Board includes an issue to check that the calculation of PILs or rate of return follows the Board’s methodology.

The Applicants argued that the Board staff submission introduces yet a third interpretation of Issue #3 whereby Board staff would use the benefit of hindsight to re-write the SIMPIL models in order to make adjustments to the 2001-2005 years and that this would be inconsistent with the Board’s Decision quoted above.

Submission by the Electricity Distributors Association (“EDA”)

The EDA had no general submission on Issue #3 but did comment on the following statement in Board staff’s submission:

“If Bill 210 froze the methodology, then none of the changes to evidence would have been made voluntarily by the applicants.”¹

¹ Board Staff Submission, December 24, 2010, page 3, para. 4.

The EDA submitted that, in the context of a proceeding where recalculations are performed for a variety of reasons and often without prejudice, it is not appropriate to impute to the Applicants a legal position with respect to the purpose and effect of Bill 210.

Submission by School Energy Coalition ("SEC")

SEC submitted that a formalistic interpretation whereby the error in the 2003 SIMPIL model was "frozen" into the model as a result of Bill 210 is unsustainable and it was never intended that the 2002 tax rate be applicable in subsequent years.

SEC submitted that a patent error should, generally speaking, be interpreted as if corrected to produce the intended result and that such an approach would be consistent with the Board's practice generally, and is also a common practice in statutory interpretation, contractual interpretation, and many other activities involving interpretation.

SEC went on to argue that in this case, the intended result of the methodology is known and does not appear to be in dispute and that unless parties can point to words in Bill 210 or in the Board's instructions that clearly override that intended result, the appropriate implementation of the Board's methodology was and is to use the correct tax rate each year.

Submission by Consumers Council of Canada ("CCC")

CCC submitted that the Applicants have correctly applied the true-up variance concepts established by the Board's guidance, except that they failed to use the correct 2003 legislated tax rates which the parties knew was the Board's intention.

CCC submitted that the SIMPIL model error was a mistake and should not be characterized as the Board's 'guidance' and that the model should be corrected to calculate the correct true-up entries.

CCC further submitted that, despite the passage of time, the deferral account balances for 2003 have not been finalized and the Board should base its decision on the best available information, which in this case would be to correct the tax rate used in calculating the 2003 true-up entries.

Board Findings

Accounting for changes in tax legislation has been in place since 2002 for electricity distributors. Income tax rates have been declining steadily since 2001 and the Board's SIMPIL methodology was created to deal with the recordkeeping associated with changes in tax legislation.

The Board does not consider formula errors in the SIMPIL models to be an articulation of Board policy. Instructions and guidance that were issued by the Board alerted the distributors to the requirement to verify tax rates and tax legislation to ensure that the correct information was being used in their RRR filings and recorded in their general ledger PILs deferral account 1562. The Board does not consider there to be any reasonable basis on which to treat formula errors in the SIMPIL model differently than data input errors. The record is clear that there have been numerous updates of the SIMPIL model inputs in order to correct errors.

The Board's Decision of December 18, 2009 listed the SIMPIL models as one manner in which the distributors received direction from the Board. However, as it pertains to verification of tax rates the Board provided explicit direction as to its expectations regarding the requirement to verify tax rates and record them accordingly. It is not reasonable to consider the formula information (later found to be incorrect) contained in the SIMPIL model to be instructive of the Board's expectations given the presence of explicit and contradictory information regarding the Board's expectations.

Issue #4: How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?

Submission by the EDA

While the Board accepted the settlement regarding this issue, the EDA expressed a concern about the Board's caution in Procedural Order No.9 that settlement of this issue has limited, if any, precedent value. The Board's Order stated:

The Board has accepted issue number 4 pertaining to ENWIN's regulatory asset issue and expects that the details of the considerations that led to the proposal will inform other distributors and stakeholders that may be [*sic.*] have experienced similar circumstances. However, the Board expects that there will likely be other

considerations when dealing with the circumstances of other distributors and therefore the terms of this particular settled issue have limited precedential value.

In the EDA's view, the agreement to exclude regulatory assets is actually recognition of the need to address the incomplete cycle problem caused by the closing of account 1562. The EDA submitted that the precedent value that ought to be taken from this negotiated resolution is that the cycle distortions caused by the unanticipated closing of account 1562 ought to be corrected.

Submission by SEC

SEC disagreed with the EDA's interpretation of the Settlement Agreement and submitted that the Board should not alter its comments on the settlement of Issue #4.

SEC submitted that the parties reached a principled result for ENWIN because of its special circumstances, which did not fit neatly into the basic rule for regulatory assets, but did not establish any general principle that would apply to the special circumstances of other utilities. In SEC's view, if the parties had sought in the Settlement Agreement to propose the principle espoused by the EDA as a rule of general application, they would have said so expressly but they did not.

Board Findings

The Board will not address the issue raised by the EDA. If the EDA seeks a variance from the Board's prior order, it should bring a motion in the appropriate manner. If there is an issue regarding how, or if, the Settlement Agreement is applicable to the circumstances of another distributor, that issue will be addressed in the context of the particular application. No further decision on this issue is required for the current Applicants.

Issue #8: How should the materiality threshold be applied to determine which amounts should be trued up?

Board staff provided the following background in its submission on the unsettled issues of December 24, 2010:

In completing the form "TAXREC" in the SIMPIL worksheets, the distributor could choose a materiality level. In some cases, the use of a non-zero materiality threshold causes a mis-match between additions and deductions of related items. For example, the accounting bad debts expense must be added back, and the tax amount deducted in determining net income for tax purposes. It is possible for the addition to be above the materiality threshold and the deduction to be below the threshold (or the reverse). Only part of the related transaction is correctly handled by the worksheet.

No party took issue with this submission.

Some aspects of this issue have been completely settled. The parties have agreed on the following:

- The Board's methodology required that all input errors must be corrected by the Applicant. The materiality threshold is zero; that is, all input errors must be corrected.
- Where the Board has made a final order disposing of account 1562, the materiality threshold as described in Issue #15 applies to corrections arising out of reassessments.
- Where the Board has not made a final order disposing of account 1562, the protocol as described in Issue #17 applies to corrections arising out of reassessments, including the use of a zero materiality threshold.
- The parties agreed that where the use of a materiality threshold within a model creates a mis-match between additions and deductions, this should be corrected by deeming both sides of the equation to surpass the materiality threshold if any one side surpasses the materiality threshold.
- The parties further agreed that while based on the most current evidence the mis-match does not apply to any of the Applicants, it is possible that through the resolution of various issues, by settlement or hearing, the numbers and calculations will change such that one or more of the Applicants may face a mis-match and if a mis-match does arise as a result of the resolution of other issues, the terms of this settlement will govern the treatment of that mis-match.

The parties did not agree on what materiality threshold, if any, should be used within the SIMPIL models. In the models originally issued to each Applicant, it was left to each of the Applicants to select the materiality level applicable to its circumstances.

Submission by Board staff

Board staff submitted that its preferred approach is to set the materiality threshold at zero in the worksheets. Distributors would then enter the information directly from their tax returns into the SIMPIL worksheets which should not change the end result very much if the items are, by definition, not material.

Board staff submitted that the original intent of including a materiality threshold was to relieve the distributor of producing evidence to support small individual line item amounts when it sought disposition of the balance and that materiality was not intended in this case to result in a mathematically exact outcome. Board staff further submitted that the tax returns and related assessments, etc. are considered the evidence in this proceeding and there is no requirement to provide documentary support for the various non-material items.

Board staff submitted that while its proposal would be a change from the methodology previously issued in the SIMPIL worksheets, the Board should consider whether the administrative simplicity of this option warrants the change.

Joint Submissions by the Applicants

The Applicants submitted that the principal concern under Issue #8 is the potential for mis-match as a result of the core functionality of the SIMPIL models although this concern has not arisen in relation to the evidence of Barrie or ENWIN nor in the revised evidence of Halton Hills.

The Applicants submitted that given that there is no longer any evidence before the Board that would provide the Board with a basis to address the mis-match concern, Issue #8 should be deleted by the Board from the issues list or in any event, should not be decided by the Board. In the event the Board does address this issue, then the Applicants took the position that a change in the treatment of the materiality level would

be a change from the methodology previously issued in the SIMPIL worksheets. The Applicants referred to the Board's Procedural Order No. 7, which stated:

The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been.

The Applicants took the position that Board staff's proposal to change the methodology is beyond the scope of this proceeding and not appropriate.

Submission by the EDA

The EDA submitted that Board guidance was clear that materiality thresholds were applicable throughout the SIMPIL model and an LDC which inserted amounts based on a materiality threshold prudently followed the rules applicable at the time. The rule against retroactive rule-making should prevent the Board from globally resetting or eliminating the materiality threshold.

The EDA submitted that where a given LDC can demonstrate that an acute mismatch inadvertently created by the model has a serious impact on it, the Board may reconsider the applicable materiality threshold on a case-by-case basis.

Submission by SEC

SEC did not support the solution proposed by Board staff to retroactively change the materiality level to zero for all distributors. SEC argued that this was not the methodology at the time nor was it the intent of the methodology.

SEC submitted an alternative implementation of the methodology whereby distributors would be obligated to show that they selected a materiality level that:

- (a) Did not produce mismatches between debits and credits whose amounts should have been related in a particular way, and
- (b) Did not exhibit a bias that would either increase or decrease the payment to, or recovery from, the ratepayers in the future.

SEC also proposed that the Board allow utilities, as an option, to choose a zero materiality level if they choose, but if they prefer a positive number they must comply with the two conditions submitted by SEC. In the latter case, an application for disposition of account 1562 should contain both calculations, so that the Board can see if the materiality level has generated any bias in the result.

Submission by CCC

CCC agreed with Board staff's submission that the materiality threshold in the SIMPIL model should be set equal to zero and that all inputs into the model should be correct in order to ensure the true-up entries and the amounts recovered from ratepayers are correct.

Board Findings

The Board observes that the issue as it pertains to the three Applicants in this combined proceeding has been settled completely with a proviso as to how to deal with any changes to the calculations that may result from the resolution of various issues or the through the Board's determinations of other issues. The Board has previously approved the Settlement Agreement as an appropriate resolution for the Applicants.

However, the submissions on this issue do serve to inform the Board's principled approach to the disposition of account 1562 for distributors not currently before the Board.

Board Staff submitted, and CCC concurred, that a materiality threshold of zero should be used. While this approach would illuminate how material or immaterial any differences might be, it would be a change to the methodology that was identified in the filing instructions.

The Board concludes that this approach would be contrary to the Board's prior decision not to revisit the merits of the methodologies that were in place in the time period in question.

Issue #9: What are the correct tax rates to use in the true-up variance calculations?

No settlement was reached by the parties on this issue.

Submission by Board staff

Board staff pointed out that the three Applicants are subject to the maximum blended income tax rate for federal and Ontario taxes due to their size and, while they were not eligible to claim the small business deduction, they may receive investment tax credits (“ITCs”) which reduce the taxes payable in the current year. Board staff noted that the Board did not specify how distributors should select the income tax rate for calculating true-up amounts or whether it should be the maximum rate or the rate after the ITCs are deducted, although deducting the ITCs was part of the filing instructions in January 2002.

Board staff submitted that a relatively simple method applicable to most distributors should be implemented. Board staff submitted, as an example, that distributors could derive the income tax rate for the true-up calculations by dividing the income tax actually payable from the final tax returns by the taxable income for each tax year, although for some distributors, this will be slightly below the maximum statutory tax rates. Parties later referred to a tax rate that would be produced in this manner as the “effective tax rate”.

Board staff submitted that there are more than 30 distributors that are subject to tax rates that lie between the minimum and maximum rates and several computations are required to determine the tax dollars payable and that the tax rate can only be derived in these cases by dividing the net income tax payable by the taxable income.

Board staff recognized that the Applicants in this proceeding may have unique situations that require individual consideration, such as tax loss carry-forwards which could reduce taxable income for the year to zero.

Board staff made reference to the SIMPIL model guide for 2002 RRR and beyond, issued in 2003 (2004). With regard to the selection of the appropriate year’s income tax rates that should be used in the gross-up calculation for the true-up amount, the SIMPIL

model guide indicated the following:

It should be the same year the true-up variance is collected from customers. For example, a utility would normally use the income tax rates of the calendar year 2004 to calculate the gross-up of the true-up variance related to the fiscal 2002 year as the true-up variance would normally be collected from customers in the 2004 rate year. Given the rate setting limitations of Bill 210, LDCs may need to adjust the gross-up amounts in future periods to reflect the rates in effect at that time. In the interim, 2004 tax rates should be used.²

Similarly, the April 2003 FAQ indicated that “the gross-up calculation is based on the tax rates legislated for the year during which the corresponding PILs is recovered from customers.”³

Board staff indicated that true-up variances have not yet been collected from or refunded to customers and suggested that the tax rates for 2011 could be used for calculating all true-up entries for all years 2001-2005 should the Board not permit collection until the next rate change scheduled for May 1, 2011.

Board staff also submitted that the federal corporate surtax could be offset against the large corporation tax (“LCT”), and should be deducted from the income tax rates included in the SIMPIL worksheet for true-up item calculations. Board staff indicated that the corporate surtax rate has been expressed as 1.12% in the Board’s instructions, and has been part of the PILs methodology since inception in 2001.

Joint Submissions by the Applicants

Halton Hills took no position on Issue #9. The other two Applicants, Barrie and ENWIN, made submissions with respect to the two variance amounts calculated by the Board issued SIMPIL models: the “Deferral Account Variance Adjustment” and the “True-Up Variance”.

Barrie and ENWIN submitted that, according to the Accounting Procedures Handbook, the appropriate tax rates to use for the Deferral Account Variance Adjustment are the

² SIMPIL Model Guide for 2002 RRR and beyond issued in 2003 (2004), Page 17

³ 2003 APH FAQs, April 2003, page 4, footnote #1.

legislated rates that would apply to the approved regulatory net income and taxable income, on the same basis as the original PILs proxy calculation.⁴

Barrie and ENWIN submitted that the appropriate tax rates to use for the True-Up Variance calculation are also the legislated rates that would apply to the approved regulatory net income and taxable income.

Barrie and ENWIN considered Board staff's suggestion of using the actual effective tax rate from tax returns in order to incorporate the effects of ITCs to be a change from the methodology that existed at the time and is not needed as the SIMPIL model already incorporates lines for dealing with miscellaneous tax credits such as ITCs.

Barrie and ENWIN took the position that using an effective tax rate from the tax return is neither simple nor appropriate as tax returns contain non-utility items that may affect the overall tax rate and utilities may under or over earn to the extent that the effective tax rate differs from that applicable to the approved regulatory net income. These Applicants further submitted that the tax treatment of retail settlement variance amounts also can lead to large differences between actual taxable income and the approved taxable income used to set rates. All of these factors would need to be taken into account.

Submission by the EDA

The EDA submitted that, while Board staff's formula may be attractive in its simplicity, the effective tax rate is a very poor proxy for the rate applicable to regulatory net income. The EDA claimed that the use of the effective tax rate would true-up such items as loss carry-forwards, non-distribution items, actual earnings and the tax treatment of regulatory assets and liabilities and that would constitute a change in methodology that existed at the time.

⁴ Accounting Procedures Handbook, Frequently Asked Questions issued April 2003, Q.2, page 2, dealing with the entries to be recorded in account 1562, states:

"Please note that if there is no change in tax legislation affecting the utility industry, the Deferral Account Allowance Column will be the same as the Initial Estimate Column and the Deferral Account Variance will be zero."

Submission by CCC

CCC supported Board staff's submission that the Board should establish a simple method of deriving tax rates for true-up variance calculations that could be applied to most distributors. CCC submitted that given the number of distributors and the range in effective tax rates, the application of a formula based on a distributor's tax return would tailor the applicable tax rate to each distributor's unique circumstances.

Submission by SEC

SEC submitted that it has some difficulty with staff's proposed "effective tax rate" approach as it does not appear that this was part of the methodology at the time and adding this now would be inconsistent with the Board's December 18, 2009 decision. SEC argued that it is not obvious that the "effective tax rate" would be the correct rate, and it may be that the marginal tax rate (usually the legislated rate) is more appropriate. SEC's interpretation of the April 2003 FAQ is that it refers to the "legislated" tax rates, not effective tax rates and that is what the distributors should have used.

SEC acknowledged that the use of the legislated tax rates may result in an over-recovery of PILs by the distributor. SEC requested that staff, in its reply submission, explore the practical and methodological implications, perhaps with numerical examples to make those implications clearer and to provide further analysis of how, if at all, the solution staff has proposed:

- (a) Deals with the issues of loss carry-forwards and other adjustments that impact effective tax rates;
- (b) Is conceptually more correct than the use of marginal tax rates; and
- (c) Is consistent with the specific instructions given to the utilities by the Board on how to implement the methodology.

Reply Submission by Board staff

Board staff's reply submission contained a replication of an interrogatory to the Applicants and it is reproduced here for reference purposes.

Please confirm that the maximum and minimum tax rates shown in the table

below are correct for the years shown. The gross-up rate does not include the surtax rate of 1.12% because the surtax can be offset against the Large Corporation Tax.

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 noted that Barrie had responded that the maximum tax rates are accurate and the minimum tax rates do not apply to it and that ENWIN and Halton Hills had responded that the maximum and minimum tax rates shown in the above tables are correct for the years shown.

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.

- To account for the changes in tax legislation during the period October 1, 2001 to April 30, 2006.

- To calculate the regulatory income tax amount, as required in the SIMPIL worksheets.
- To state the income tax rates approved by the Board in the distribution rate application. These Board-approved income tax rates appear in column C, "Initial Estimate", of the SIMPIL TAXCALC worksheet.
- To calculate the deferral account variance adjustment amounts, as required in the SIMPIL worksheets.
- To calculate the true-up variance adjustment amounts, as required in the SIMPIL worksheets.
- To calculate the tax gross-up amounts, as required in the SIMPIL worksheets. Staff notes that the established methodology requires the exclusion of the calculated surtax rate of 1.12% from the tax rate when deriving the gross-up.
- To support the amounts recorded in the SIMPIL account 1562 continuity schedule.

Board staff indicated that the sources of these income tax rate percentages can be found in various publications and on public accountants' websites which, in staff's view, are reliable sources of tax information and should be available to the Board in considering the evidence in this proceeding.⁵

Other than a reply submission from SEC stating that it reiterates its earlier submissions no other party argued in response to the Board staff reply submission on this issue.

Board Findings

The Board notes that the Board staff reply submission differs from its December 24, 2010 submission and appears to be generally responsive to the concerns raised by the parties in their submissions.

The Board notes that the application of the staff proposal to use the tax rates contained in the tables shown above is compatible with the manner in which the parties settled Issue # 4 with regard to tax loss carry-forwards.

The Board notes that no party raised any specific concerns with proposals on this

⁵ Staff made reference to the following publications: *Practitioner's Income Tax Act*, Editor: David M. Sherman, published by Carswell; *Preparing Your Corporate Tax Returns*, published by CCH; *Stikeman Income Tax Act Annotated*, published by Carswell as well as the websites of Ernst & Young and KPMG.

particular issue contained in Board staff's reply submission.

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 submission.

Issue #10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

There was no settlement reached on this issue.

Submission by Board staff

Board staff submitted that the rate components associated with the collection of the 2001 deferred PILs amount were intended to be removed from rates at the next rate-setting process in 2003 but continued longer than anticipated into 2004, due to the rate freeze imposed by the government in 2002.

The Applicants in this proceeding have shown the 2001 deferred PILs amount in the PILs summary reconciliation of the balance in account 1562 for each period until it was removed from distribution rates in 2004. In addition, the amounts billed to customers for 2001 deferred PILs have been shown in the account 1562 summary reconciliation through 2004.

Board staff noted that the 2001 deferred PILs was a rate component being collected through 2002 distribution rates, not by a separate rate rider with a sunset date for removal from rates. Board staff provided its view that, on a preliminary basis, the Board approved rates continued to be in force until the Board changed those rates in 2004. Therefore, in addition to the various true-up items (Issue #11), the pertinent reconciling amounts are the net differences between the deferred PILs amounts approved in rates and the amounts billed to customers for the period 2002-2004.

Submission by the Coalition of Large Distributors ("CLD")

The CLD submitted that the 2001 Board approved PILs amounts were approved in final orders for 2002 which were frozen by Bill 210; and the Board, therefore, does not have

the jurisdiction to retroactively deny recovery of those amounts, although the Board may dispose of the net differences between the deferred PILs amounts approved in rates and the amounts billed to customers for the period 2002-2004.

In support of its submission the CLD relied on the Board staff discussion paper which described the purpose of account 1562 as “designed to track and record the variances resulting from the difference between the Board-approved PILs amount and the amount of actual billings that relate to the recovery of PILs.”⁶

The CLD stated that the 2002 rate orders, which included an allowance for the 2001 PILs amounts, were final in nature and are not open to revision until replaced by a subsequent rate order. The CLD referred to several cases in support of the well-established rule against retroactive rate-making.⁷

The CLD’s submission then went on to discuss the relevance of deferral accounts which are distinct from final rates in that they do not vary the original approved rate order. The CLD relied on the Supreme Court of Canada decision in *Bell Canada v. Bell Aliant Regional Communications* which involved a regulatory scheme that set rates and captured in an earnings-sharing deferral account the difference between the set rates and amounts actually collected.⁸

In conclusion, the CLD submitted that an account that tracks differences in amounts approved in rates and actual amounts recovered from customers cannot be used to change amounts that were approved in base distribution rates. It argued that the 2001 PILs amounts were collected under final rate orders and they cannot be retroactively adjusted, although the Board may dispose of the net differences between the deferred PILs amounts approved in rates and the amounts billed to customers from 2002-2004.

Joint Submissions by the Applicants

The Applicants endorsed and adopted the CLD submission on this issue. The Applicants also argued that the Board’s account 1562 methodology was not designed or

⁶ Staff Discussion Paper, Account 1562 – Deferred Payments in Lieu of Taxes: Methodology and Disposition of Balances for Electricity Distribution Companies affected by section 93 of the Electricity Act, 1998, EB-2007-0820 (“Staff Discussion Paper”) at page 5

⁷ *Northwestern Utilities Ltd. V. Edmonton*, [1979] 1 S.C.R. 684; *Bell Canada v. CRTC* [1989] 1 S.C.R. 1722; *ATCO Gas & Pipelines v. Alberta (Energy & Utilities Board)*, [2006] S.C.J. No. 4.

⁸ *Bell Canada v. Bell Aliant Regional Communications*, 2009 SCC 40

intended to remove an approved PILs proxy amount from rates but only to make specific adjustments as found in the Board's SIMPIL models. This was the methodology as evidenced by the Board's 2004 and 2005 SIMPIL models. The instructions on the "Analysis of Account 1562" sheet⁹ (iii) clearly indicate that the 2001 PILs amount was to be included in the "Board-approved PILs tax proxy from Decisions" for 2003.

The Applicants also submitted that Bill 210 prevented the planned removal of the 2001 PILs proxy from rates and prevented the planned addition of the third tranche of Market Allowed Rate of Return (MARR) and updating of the PILs proxy.

Submission by the EDA

The EDA also endorsed and adopted the submissions made by the CLD with respect to this issue.

Submission by CCC

CCC submitted that the accounting treatment adopted by the Applicants, the only proposal filed as evidence in this proceeding, is reasonable.

Submission by SEC

SEC submitted that the 2001 PILs proxy was part of rates which, as the utilities rightly point out, were frozen by Bill 210. It argued that the issue in this proceeding is how the reconciliation and true-up of whatever PILs were collected in rates should be done, consistent with the Board's methodology. SEC submitted that it appeared clear to it that the 2001 PILs proxy was in fact collected from ratepayers until 2004, and therefore in reconciling amounts collected from amounts paid (and subject to the many other caveats in that calculation), the amounts collected should reflect the amounts actually included in rates in each year.

SEC argued that the Board methodology required the 2001 PILs proxy to be included in the true-up calculations, thus reducing the amounts now recoverable from the ratepayers by, generally, the amount of that extra recovery in 2003 and 2004.

⁹ "PILs 1562 Calculation" tab, in footnote 1

Reply Submission by SEC

SEC expressed a concern with the emphasis by the CLD on the ratemaking concept of retroactivity. The CLD argued that since the 2001 PILs proxy was included in rates at the time those rates were frozen, the effect was to allow the utilities to keep that over-collection as long as it continued. SEC argued that the premise in the CLD's submission appears to be that the 2001 PILs proxy was no different from any other component of rates and that is an incorrect, unfounded premise.

In SEC's view the PILs amount is quite different from the third tranche of MARR, for which there was no variance account in place, whereas the PILs amount included in rates was always intended to be the subject of a trueup mechanism that was not affected by Bill 210.

SEC concluded that the Board in the current proceeding is not doing anything, directly or indirectly, to alter the rates in place in 2002, 2003, or 2004 but instead is completing the process it has always had in place to true up the PILs proxy. It is not retroactive ratemaking to clear a variance account covering expenses in a prior period, as long as the account was in place in that period.

Board Findings

As stated earlier in this decision, the Board's December 18, 2009 decision (excerpts inserted below) determined and described the approach the Board would take in making its findings in this proceeding. The task at hand is one of determining what the methodology was at the time and then determining if distributors applied it appropriately. In this regard, the December decision stated:

The Board agrees that the appropriate approach is a review of the account in terms of whether the distributors applied the methodology appropriately as the methodology existed at the time. The Board finds that it would be inappropriate to now change the methodology which was used in the past. This would only be appropriate if the Board had clearly signaled that the methodology itself would be subject to future revision on a retrospective basis. The Board made no such pronouncement. While the Board's methodology may not have been formally tested and adopted through a rates proceeding, the tools clearly were sanctioned by the Board and formed the basis on which distributors were expected to operate.

It was reasonable to expect that any methodological changes would be prospective in their application.¹⁰

The December decision went on to state:

The parties may well differ in their interpretations of the methodology but the Board will decide those questions on the basis of the facts and the underlying documents. The Board will not enter into an enquiry as to what the methodology should have been but rather, will determine, where necessary, what the methodology was and what the appropriate application of the methodology should have been.¹¹

The substantive position put forward by the CLD and supported by the Applicants and the EDA posits that the Board does not have the jurisdiction to retroactively seek to deny recovery of Board-approved PILs amounts for 2001. SEC has responded to this argument by claiming that no retroactive change to rates is being proposed but rather, the issue is whether the PILs proxy actually included in rates should be trued up in accordance with the variance account structure already in place at the time.

It is clear to the Board that the real disagreement centres on the interpretation of the methodology that was in place and not on whether or not the Board has jurisdiction to retroactively set rates. Legal constraints, such as the prohibitions associated with retroactive ratemaking, may establish boundaries for the Board's consideration of what methodology was in place at the time. However, as stated in the December 18, 2009 decision the Board will decide questions of interpretation on the basis of the facts and the underlying documents. In the application of its stated approach, the Board first determines what the methodology was at the time.

The 2001 PILs, also referred to as the 2001 PILS 'proxy', were included in 2002 rates that were collected by distributors beyond the 2002 rate year due to the rate freeze imposed by Bill 210 in 2002.

The 2001 PILs rate components were not identified in the tariff sheet as separate rate riders having a sunset expiration date but rather formed a component of the total distribution rate structure.

¹⁰ EB-2008-0381, Decision with Reasons, December 18, 2009, pages 5-6.

¹¹ EB-2008-0381, Decision with Reasons, December 18, 2009, page 7.

In its instructions, the Board required the 2001 PILs proxy included in rates, and amounts collected from (or billed to) customers for the 2001 PILs proxy rate components, to be recorded in the PILs 1562 deferral account. The function of the account was to determine the difference between a dollar amount (the PILS proxy), that formed part of the approved rate, and a dollar amount that was actually collected for that purpose. No departure from this guidance was implied or expressed in subsequent Board directions. The 2001 PILs proxy remained a portion of the amount to be collected for as long as it remained in rates. The variances derived by following the various forms of guidance and instructions were also to be posted to the PILs 1562 deferral account.

The SEC contention that the Board methodology required the 2001 PILs proxy to be included in the true-up calculations thus reducing the amounts now recoverable from the ratepayers is simply not supported by the instructions and guidance provided. The Applicants were required to account for both the 2001 PILs proxy components included in rates and the PILs actually collected from customers until the rates were changed in 2004. There was no methodology in place that would have had the effect of backing out a portion of the approved rate as part of the true-up calculation.

The Board considers the methodology that was in place at the time to be one that had the functional objective of tracking, among other things, the variance between the 2001 PILS proxy in rates (and therefore approved on an ongoing basis), and the 2001 PILs collected from (or billed to) customers. The Board's assessment of the appropriate account balances is therefore based on each Applicant's application of this methodology.

Based on the evidence supplied and the Board's determination above, the Board finds that the Applicants have correctly applied the PILs and SIMPIL guidance that existed at the time with respect to the continued collection in 2002 through 2004 of the fourth quarter 2001 PILs proxy that was included in final 2002 rates.

Issue #11: Should the SIMPIL true-up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

No settlement was reached on this issue.

Submission by Board staff

Board staff submitted that the 2001 SIMPIL true-up variances were recorded only once in the account 1562 summary reconciliation in 2002 and there were no instructions issued that the distributors should continue to calculate additional true-up variances for 2001 deferred PILs as the tax rates declined in 2003 and 2004.

Board staff stated, as it did in respect of Issues #3 and #18, that the Board's methodology required changes in tax legislation to be accounted for and included in the true-up entries to the PILs 1562 deferral account. Board staff also recognized that any variance amounts related to 2001 deferred PILs may not be significant because they only pertain to a three-month period.

Joint Submissions by the Applicants

The Applicants submitted that they followed the Board's methodology and instructions at the time, which did not include tracking of true-up variances related to 2001 deferred PILs after 2002, and changing the methodology now would be inappropriate.

The Applicants referred to Board staff's submission on this issue which also indicates that the methodology at the time did not require a true-up for 2001 in 2003¹², so this requirement should not be added at this point.

Submission by the EDA

The EDA submitted that, from the inception of the use of the SIMPIL model, Board staff instructed the LDCs as to which items were to be trued up but did not advise the LDCs to continue to true up the items related to 2001 deferred PILs and, therefore, implied that LDCs should not continue to true up the items. The EDA argued that Board staff set the rules as to what items were to be trued up and, by omission, which were not to be trued up and it is not appropriate to retroactively change those rules. The EDA reiterates that this is not a circumstance where no guidance was given on an issue such that the prudence of each LDC in interpreting the SIMPIL model should be examined.

¹² Board Staff Submission on the Unsettled Issues, December 24, 2010, page 8

Submission by CCC

CCC agreed with Board staff's submission that SIMPIL true-up entries should be recorded until the 2001 deferral account allowance was removed from rates. CCC also agreed with Board Staff that the true-up entries should be subject to the legislated tax rate in place at the time of the entries.

CCC submitted that, as with Issue #10, the Board did not provide any direction to distributors to calculate additional true-up variances for 2001 deferred PILs beyond 2002 but maintained that the Board should establish a consistent approach to true-up entries and the application of legislated tax rates for the period October 1, 2001 to April 30, 2006.

Submission by SEC

SEC agreed with staff submissions on this issue, the characterization of the methodology and the Board's instructions. SEC submitted that, absent any instructions to stop truing up variances relating to 2001 amounts, those true-ups should have continued. SEC requested that staff in its reply submissions comment on whether and, if so, why they believe this is a reasonable conclusion based on the lack of specific instructions provided to distributors at the time.

In light of staff's comment that these amounts may not be material, SEC also asked that staff provide specific examples, including numerical examples, of the possible impact of the Board's determination to require continued 2001 true-up, or not.

Board Findings

The Board has provided its findings with respect to the issue of the 2001 PILs proxy incorporated into the 2002 distribution rates contained in Issue #10 above. Based on the same analysis as applied in dealing with Issue #10 the Board finds that the methodology in place at the time as per the instructions provided was to track for the true-up variances for the 2001 truncated tax period only once, that being in 2002.

The Board did not issue instructions to record such variances for 2001 more than once. By contrast, the instructions for the 2002 proxy require annual calculations of variances and require the distributors to record these amounts in the PILs 1562 deferral account

up to April 30, 2006.

The Board accepts the view of the EDA on this matter. A pattern of providing explicit instructions had developed and it is reasonable for the Applicants to have based an understanding of the methodology on a positive statement of instruction as opposed to an implied continuation of a previous instruction where no instruction was provided.

IMPLEMENTATION

The Applicants

The Board directs the three Applicants to reflect the Board's findings and the approved Settlement Agreement in SIMPIL models reflecting the final balances in account 1562 as at April 30, 2006 and to file those models with the Board and serve a copy on parties in this proceeding by July 6, 2011. The Board will review and approve final balances for disposition at the time of the Applicants' next rate applications.

If models were used that contain known errors, the Applicants will have to use updated models for this filing. Halton Hills filed updated models as part of its evidence. ENWIN and Barrie relied on earlier models, and in order to reflect the Board's decision in this proceeding these distributors may have to use the models on which Halton Hills relied to prepare its most recent updates to evidence. The parties have not indicated that these updated models used by Halton Hills produced an incorrect result. Therefore, the Board expects that models will be filed that will exclude known errors to be able to generate the correct balances to be ordered for disposition in this proceeding. The use of the updated model filed by Halton Hills by all three Applicants would address the Board's expectations.

ALL OTHER DISTRIBUTORS

Following the approach used in the Regulatory Asset proceeding,¹³ the Board will establish a process whereby the conclusions from this proceeding may be applied to the remaining distributors.

¹³ Recovery of Regulatory Assets – Phase 2, RP-2004-0117/0118/0100/0069/0064, December 9, 2004.

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

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

Cost Awards

In the Notice of Combined Proceeding and Notice of Hearing issued on November 28, 2008 ("Notice") the Board indicated that it would grant intervenor status to all parties that were registered as intervenors in any of the 2008 or 2009 electricity distribution rate applications. The parties granted intervenor status were set out in Schedule B to the Notice.

The Board finds that the following intervenors set out in Schedule B to the Notice are eligible for costs: School Energy Coalition (SEC), Vulnerable Energy Consumers Coalition (VECC), Consumers Council of Canada (CCC), Energy Probe, Pollution Probe Foundation, and Association of Major Power Consumers of Ontario (AMPCO). The Schedule also identified certain distributors as intervenors which are not eligible for costs, pursuant to section 3.05 of the Board's *Practice Direction on Cost Awards*.

In Procedural Order No. 6 the Board made certain additional distributors intervenors rather than applicants in the proceeding, although these distributors are also not eligible for costs pursuant to the *Practice Direction on Cost Awards*.

As originally stated in the Notice of Hearing any costs awarded in this proceeding shall be paid by all rate-regulated electricity distributors that are required to pay PILs taxes under section 93 of the *Electricity Act, 1998*. Cost awards will not be recovered from distributors whose rates are not currently fixed or approved by the Board (namely Cornwall Street Railway, Light and Power Company Ltd. and Dubreuil Forest Products

Ltd.) or from distributors that are not subject to PILs under section 93 of the *Electricity Act, 1998* (namely, Attawapiskat Power Corporation, Fort Albany Power Corporation, Kashechewan Power Corporation, Hydro One Remote Communities Inc., Hydro One Networks Inc., Hydro One Brampton Networks Inc., Great Lakes Power Ltd. (now Algoma Power Inc.) and Canadian Niagara Power Inc.).

Any costs awarded by the Board will be allocated to distributors who are to pay the cost awards based on distribution revenues.

The Board will use the process set out in section 12 of the Board's *Practice Direction on Cost Awards* and will act as a clearing house for all payments of cost awards.

THE BOARD ORDERS THAT:

1. The intervenors shall submit their cost claims by July 15, 2011. A copy of the cost claim must be filed with the Board and one copy is to be served on each rate-regulated licensed distributor subject to section 93 PILs. The cost claims must be completed in accordance with section 10 of the Board's *Practice Direction on Cost Awards*.
2. The distributors will have until July 29, 2011 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board and one copy must be served on the intervenor against whose claim the objection is being made.
3. The intervenor whose cost claim was objected to will have until August 5, 2011 to make a reply submission as to why its cost claim should be allowed. A copy of the reply submission must be filed with the Board and one copy is to be served on the objecting distributor.
4. The Board will then issue its decision on cost awards. The Board's costs may also be addressed in the cost awards decision.

Service of cost claims, objections and reply submissions on other parties may be effected by courier, registered mail, facsimile or e-mail.

All submissions in this hearing (i.e. cost claims, objections and replies) will form part of

the public record. Copies of the submissions will be available for inspection at the Board's office and may be published on the Board's website.

DATED at Toronto, June 24, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX A

TO

**DECISION AND ORDER
ACCOUNT 1562 DEFERRED PILs**

EB-2008-0381

PROCEDURAL DETAILS

PROCEDURAL DETAILS

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a proceeding on its own motion to determine the accuracy of the final account balances with respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain electricity distributors that filed 2008 and 2009 distribution rate applications.

Board staff issued a discussion paper on August 20, 2008 summarizing the principles established by the Board to date with respect to the determination of the account 1562 balances. The staff discussion paper also identified matters that Board staff believes are outstanding and may require clarification.

Procedural Order No. 1 was issued on November 28, 2008, setting out the initial steps in the proceeding, and Procedural Order No. 2 was issued on December 16, 2008 approving new interventions. A technical conference was held on January 20, 2009. Procedural Order No. 3 was issued on February 3, 2009, making provision for interrogatories and ordering submissions from three of the named distributors: ENWIN Utilities Ltd. (ENWIN), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (Barrie) (collectively, the “Applicants”).

Procedural Order No. 4 was issued on March 6, 2009 and set the dates for submission of interrogatory responses by the applicants. Dates were also set for submissions by all parties on further procedural steps.

On April 7, 2009, Halton Hills requested an extension to the deadline for submission of interrogatory responses. On April 27, 2009, the Board issued Procedural Order No. 5 that extended the due date for interrogatory responses and invited submissions on further procedural steps.

A non-transcribed meeting of the Applicants, intervenors and Board staff was held on August 17 and 18, 2009.

On October 7, 2009, Board staff issued a letter which requested comments on a proposed procedural step whereby the Board would invite written submissions on a threshold question. The question posed in Board Staff’s letter was as follows:

The Board's authority to adjust electricity rates was limited by Bill 210 from November 11, 2002 until January 1, 2005. Does the Bill 210 limitation on the Board's rate setting authority in the rate-freeze period in effect to December 31, 2004, impose any restrictions on the Board's ability to make adjustments to the account 1562 balances as they existed, and were audited, as of December 31, 2004?

The Board decided to address the threshold issue before continuing with the proceeding and invited written submissions from all parties with respect to the threshold question and subsequent procedural steps.

Procedural Order No. 6 was issued on October 26, 2009 and clarified which parties were applicants in the proceeding and which parties were intervenors only. The three Applicants that submitted evidence, namely, ENWIN, Halton Hills, and Barrie became the only applicants for this phase of the proceeding. The following distributors that were named as applicants in the Notice and Procedural Order No. 1, but were not required to submit evidence, were made intervenors in this proceeding: Hydro Ottawa Limited, Sioux Lookout Hydro Inc., Oshawa PUC Networks Inc., Wellington North Power Inc., Rideau St. Lawrence Distribution Inc., Newmarket-Tay Power Distribution Ltd.

Procedural Order No. 7 was issued on December 18, 2009. It allowed for the submission of revised evidence, scheduled an issues conference, an issues day before the Board, and provided for another round of interrogatories and replies.

The Board issued its decision with respect to the threshold matter on December 18, 2009.

An Issues Conference was held on January 27, 2010.

The Issues Day before the Board was held on February 9, 2010.

Procedural Order No. 8 was issued on February 17, 2010. The Board approved the issues list for the proceeding and established a schedule for further discovery and meetings of the parties as well as filing requirements related to the meeting outcomes.

A partial settlement proposal was filed with the Board on September 30, 2010, and was subsequently accepted by the Board with the exception of Issue #15. Afterwards, ENWIN and Barrie filed updated evidence to reflect the Settlement Agreement. Halton Hills had already filed its updated evidence.

Decision and Procedural Order No. 9 was issued on December 23, 2010 and set out dates for submissions, reply and sur-reply submissions on the unsettled issues which concluded on February 7, 2011.

The Board issued a letter on February 28, 2011 that requested suggestions for any further procedural steps to be filed by March 4, 2011.

APPENDIX B

TO

**DECISION AND ORDER
ACCOUNT 1562 DEFERRED PILs**

EB-2008-0381

SETTLEMENT AGREEMENT

EB-2008-0381
Account 1562 - Deferred Payments in Lieu of Taxes (PILs)
Combined Proceeding
Proposed Settlement Agreement
September 30, 2010

Introduction

This Settlement Agreement is filed with the Ontario Energy Board in accordance with Procedural Order No. 8 in the combined proceeding, in which the Board will determine the methodology to be used for the calculation and disposition of balances in account 1562 – deferred PILs.

The Parties to this Agreement are:

- § PowerStream Inc. (successor to Barrie Hydro), *ENWI*N Utilities Ltd., Halton Hills Hydro Ltd. (collectively the “Applicants”),
- § Consumers Council of Canada, School Energy Coalition (collectively the “Ratepayer Intervenor”), and
- § Coalition of Large Distributors (on issue 10 only), Electricity Distributors Association.

The role adopted by the Board Staff in the Settlement Conference is set out on page 5 of the Board’s Settlement Conference Guidelines (the “Guidelines”). Although Board Staff is not a party to this Agreement, as noted in the Guidelines, the Board Staff who did participate in the Settlement Conference are bound by the same confidentiality standards that apply to the Parties to the proceeding.

These settlement proceedings are subject to the rules relating to confidentiality and privilege contained in the Guidelines. The parties understand this to mean that the documents and other information provided, the discussion of each issue, the offers and counter-offers, and the negotiations leading to the settlement – or not – of each issue during the Settlement Conference are strictly confidential and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception: the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Agreement.

In this Settlement Conference, certain persons participated who have not in the end become parties to this Settlement Agreement. The Parties understand the rule to be that those persons remain subject to the confidentiality rules in the Guidelines in all respects.

This Agreement represents a complete settlement of certain issues and an incomplete settlement of certain other issues. It is acknowledged and agreed that none of the Parties will withdraw from this Agreement under any circumstances, except as provided under Rule 32.05 of the Board’s Rules of Practice and Procedure.

Unlike many other settlement proceedings, the Parties have settled each issue independently of the other issues. The financial and other tradeoffs across and between issues that is common in other settlement negotiations was not part of this settlement negotiation. Thus, except where the context otherwise requires, such as where the settlement of one issue relates to or is dependent on the settlement of another issue, the settlement of each issue is independent of the settlement of all other issues.

The results of this settlement proceeding are as follow:

Terms Used in this Agreement	Issue Numbers
Complete Settlement: In this proceeding, “complete settlement” means the entire issue is settled and all parties agree with the settlement.	1, 2, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22
Incomplete Settlement: In this proceeding, “incomplete settlement” means some aspects of the issue are settled and some remain unsettled. All parties agree with the settled aspects of the issue.	3, 8
No Settlement: In this proceeding, “no settlement” means the parties failed to reach agreement.	9, 10, 11

The Parties agree that this is a binding and enforceable settlement agreement as it relates to the Applicants’ accounts 1562 if and when it is approved by the Board, provided that that this Agreement is binding and enforceable with respect to PowerStream Inc. only with respect to the Barrie Hydro account 1562.

The Parties further agree that this Agreement does not purport to be binding or enforceable with respect to any person, whether regulated entity or otherwise, that is not a party hereto, including without limitation any member of the Coalition of Large Distributors or the Electrical Distributors Association.

It is agreed that this Settlement Agreement is without prejudice to any of the Parties re-examining these issues in any subsequent proceeding and taking positions inconsistent with the resolution of these issues in this Settlement Agreement, and distributors other than the Applicants are not bound by the positions stated herein. However, none of the Parties will in any subsequent proceeding take the position that the resolution therein of any issue settled in this Settlement Agreement, if contrary to the terms of this Settlement Agreement, should be applicable to any of the Applicants with respect to their accounts 1562.

References to the evidence supporting this Agreement on each issue are set out in Appendix A to this Agreement. The remaining Appendices to the Settlement Agreement provide further evidentiary support by setting out the results of the settlement of the issues herein when applied to the factual situations of the three Applicants. The Parties agree that EnWin and PowerStream will each file an Appendix no later than October 7, 2010. Those Appendices will include SIMPIL model runs and continuity schedules that incorporate the terms agreed to in this Agreement. The Parties agree that the Halton Hills filing of March 19, 2010 is the most recent reflection of that Party’s information and no further filing of SIMPIL models is required as part of this Agreement. The Parties agree that this Settlement Agreement and the Appendices form part of the record in EB-2008-0381.

The Appendices, except Appendix A, were prepared by individual Applicants as updates of their respective evidence in this proceeding. The other parties are relying on the accuracy and completeness of the Appendices in entering into this Agreement.

There is an approved issues list for this proceeding. The Parties have followed the issues list approved by the Board and attached to PO #8 to organize the components of this Settlement Agreement.

Agreements with Respect to the Issues

- 1) How should the stand-alone principle be applied in this proceeding?
e.g. Should the Large Corporation Tax and Ontario Capital Tax thresholds/ exemptions be pro-rated among regulated and non-regulated companies in the corporate group or allocated for regulatory purposes 100%? Should the PILs tax proxy (expense) be based on the revenues, costs and expenses associated only with the distribution activities?

Complete Settlement:

The Parties agree that the regulatory principle referred to as the stand-alone principle was part of the Board's methodology for account 1562. The stand-alone principle should be applied in considering the calculation and clearance of Account 1562 unless there is a prior Board decision that states otherwise. The stand-alone principle applies to each of the Applicants, such that any tax thresholds or exemptions as well as any PILs tax proxies must be calculated based only on the regulated entity, without regard for any affiliates.

Halton Hills and Barrie used the maximum exemptions for Ontario Capital Tax and Large Corporation Tax in each year 2001-2005 in the SIMPIL models filed in evidence. In 2002, EnWin received a Board decision which allows the sharing of the OCT and LCT exemptions for 2002 and 2003. EnWin shared the OCT and LCT exemptions in 2002 and 2003. EnWin used the maximum exemptions in 2004 and 2005.

The Parties agree that each of these approaches to applying the stand alone principle is, in the circumstances of the Applicants, an appropriate way of complying with the Board's methodology.

Reasons for Agreement:

The stand-alone principle was reflected in the Board's application instructions "Application Filing Guidelines" dated December 2001.

- 2) Does the balance in account 1562 establish the obligation to, or the receivable from, the distributor's ratepayers? How should the 1563 contra account be cleared in conjunction with the disposition of the 1562 control account?

Complete Settlement:

Account 1562 is the control account and the balance in that account establishes the obligation to or receivable from the distributor's ratepayers. Account 1563 will be cleared at the same time as account 1562. Clearing account 1563 cannot result in an obligation to or receivable from the distributor's ratepayers.

The Parties agree that these respective functions for accounts 1562 and 1563 were part of the Board's methodology for account 1562. The three Applicants follow method #3 as described in the Board's April 2003 FAQ and use the contra account 1563.

The Parties agree that the following approach will be used to record the reductions in the account balances of 1562 and 1563. The Parties request that the Board approve rate riders to clear the amount in account 1562 over the disposition period(s) agreed to pursuant to the agreement on Issue 20 with no true-up except for input errors and reassessments. This rate rider will be multiplied by the kilowatt-hours or kilowatts for each class delivered each month to derive the dollars to enter into accounts 1562 and 1563. At the end of each month the distributor will record a journal entry with the appropriate sign to reduce the balance in account 1562. Also, at the end of the twelfth month an estimate of the unbilled PILs amount must be made and entered in account 1562. If account 1562 has a debit balance or a recovery from customers, the entry will be to debit 1563 and credit 1562. If the balance in account 1562 is a credit or payable to customers, then the entry will be to debit 1562 and credit 1563. See Issues 14, 15, 17, 19, 21 and 22.

Reasons for Agreement:

The Board established in the Frequently Asked Questions document dated April 17, 2003 that LDCs could select one of three approaches for recording balances in 1562. The Applicants all selected the approach that included the use of account 1563.

For disposition accounting relating to Account 1563, it is reasonable to use the guidance provided for the creation of the accounts.

- 3) Has the distributor correctly applied the true up variance concepts established by the Board's guidance?

Incomplete Settlement:

One part of this issue is completely settled, and the remainder is unsettled.

Settled. The Parties agree that the Board's methodology, in place at the relevant times, includes correcting all input errors. The Parties agree that the Applicants have corrected all identified input errors.

Unsettled. Except for the correction of input errors, the Parties do not agree on the scope of this issue.

Specifically, the Parties disagree about whether:

- 1) The issue includes both a determination of what true-up variance concepts were established by the Board's methodology, and then a review of the Applicants' implementation of the Board's methodology, or
- 2) The issue exclusively requires a determination of whether the Applicants properly implemented the Board's methodology.

For example:

The Parties disagree about making any adjustments to the SIMPIL models. Some parties believe that certain functions of the models should be corrected as erroneous, on the basis that they are inconsistent with the Board's methodology. Others believe that the models themselves are articulations of the Board's methodology, and to adjust the models is to change the Board's methodology that was in place at the relevant time.

Reasons for Agreement:

The Parties accept that where errors in data entry by an Applicant are identified prior to a Board decision ordering clearance of Account 1562, those errors should be corrected pursuant to the settlement provisions of Issue 15.

- 4) How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?

Complete Settlement:

The Parties agree that regulatory assets should be excluded from PILs calculations both when they are created, and when they are collected, regardless of the actual tax treatment accorded those amounts.

In the case of Applicants Halton Hills and Barrie, their regulatory asset treatment was consistent with this principle, as set out in Appendices X (page x) and Y (page y) respectively.

In the case of Applicant EnWin, regulatory assets were included in the calculation, but as an indirect result when cost of service was once again introduced in 2006 a tax loss carryforward created by regulatory asset movements was credited in part to ratepayers in the calculation of rates. The Parties agree that the appropriate solution to this special case is as set out in Appendix Z (page z), which reflects the spirit of the general principle as applied to the facts of the unique EnWin situation.

Reasons for Agreement:

While the Parties do not agree that the *Report of the Board 2006 Electricity Distribution Handbook* is an authority that applies to the 2001-2005 period, the Parties do agree that the *Handbook's* articulation of the Board's methodology in respect of regulatory asset treatment is representative of the Board's methodology that was in place from 2001-2005.

Page 61 of the *Report of the Board 2006 Electricity Distribution Rate Handbook* states:

"A PILs or tax provision is not needed for the recovery of deferred regulatory asset costs, because the distributors have deducted, or will deduct, these costs in calculating taxable income in their tax returns."

- 5) Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?

Complete Settlement:

The Parties agree that the Applicants' actual monthly billing determinants multiplied by the PILs rate slivers from the 2002, 2004, 2005 (or other applicable) applications should be used to calculate the billed amounts for all years under examination.

The Applicants have provided evidence that shows how each calculated the recoveries using customer counts, kilowatt-hours and kilowatts multiplied by the PILs rate slivers from sheets 6 and 8 of the 2002 RAM worksheets, or other applicable application models. For Halton Hills see IRR #42, Appendix G on June 9, 2009; for Barrie IRR #39, Schedule 10 filed on May 27, 2009; and for EnWin, revised evidence filed on January 15, 2010.

Reasons for Agreement:

The Board's methodology is set out in the Board's April 2003 FAQ #2. In that FAQ it is noted that at the end of each month, the utility should make an entry crediting the portion of monthly billing that represents the recovery of PILs. In order to determine the dollar amounts for inclusion in account 1562, billing determinants should be used that are consistent with the distributor's rate calculation.

- 6) How should unbilled revenue be treated in the amounts recorded in 1562 relating to billings to customers? If information is not available to calculate unbilled revenue as at April 30, 2006 how should this be treated in the proceeding?

Complete Settlement:

The Parties agree that the Board's methodology was that the unbilled revenue should be factored into the amounts to be recorded for the period ended April 30, 2006. The resulting PILs entries may be made after April 30, 2006 to allow for the proper accounting to be completed. For the Applicants, the information is available to calculate unbilled revenue as at April 30, 2006.

Barrie recorded PILs recovered from customers in May and June 2006 using unbilled consumption prior to May 1, 2006 [IRR #40, May 27, 2009]. EnWin compiled the customer counts and the kWhs and kW for the period January 1 to April 30, 2006 after April 30 and multiplied these billing determinants by the rate slivers [Worksheet 4, January 15, 2010]. Halton Hills calculated its total unbilled revenue by class as at April 30, 2006 and multiplied those dollars by the percentage of the PILs sliver divided by the total rate [IRR #43, Appendix G, June 2, 2009].

The Parties agree that each of these approaches to calculating unbilled revenues is, in the circumstances of the Applicants, an appropriate way of complying with the Board's methodology.

Reasons for Agreement:

Generally, distributors should have the information necessary to complete this calculation because they had to bill the customers for consumption for the period before May 1, 2006. The energy consumed prior to May 1, 2006 was to be billed at the rates in effect for that period. The PILs amount associated with that consumption would have been billed by the distributor (as part of the pro-ration of the consumption) using the rates in effect prior to May 1, 2006.

If the distributor cannot calculate the unbilled revenue amount at April 30, 2006, it can use the PILs amount billed to customers after April 30, 2006 for consumption prior to May 1, 2006.

- 7) If a regulated distributor has a service company or parent company that provides services to the distributor, and the service company or parent charges the distributor for labour including all overhead burdens, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?

Complete Settlement:

The Parties agree that the Board's methodology in place at the relevant times was that the liability for the post employment benefit obligations should be shown in the records of the company that directly employs the people and issues the federal government Statement of Remuneration Paid (T4s). The movement in this liability can be used in the SIMPIL true-up methodology only if the people are directly employed by the regulated distributor and the distributor issues the T4s for these people. Any post-employment benefit liabilities for staff employed by service companies, or other affiliated or associated non-regulated companies, would not be used in the distributor's SIMPIL reconciliations.

Barrie and Halton Hills did not pay for personnel services provided by an affiliated service company during the period 2001 to 2005. The OPEB liability on the balance sheets of Barrie and Halton Hills relate to the people who were directly employed by these distributors. EnWin directly employed the staff to which the OPEB liability relates. In addition, EnWin paid for certain staff services provided by an affiliated company. These charges paid to the affiliated company did not result in an increase in the OPEB liability shown on EnWin's balance sheet which was used in the SIMPIL worksheet reconciliations of PILs true-up items.

The Parties agree that the OPEB liabilities used in the PILs calculations for each Applicant are reasonable based on the evidence that the projected benefits included in the OPEB liabilities relate to employees who are directly employed by the Applicants.

Reasons for Agreement:

The general principle that was part of the Board's methodology at the relevant times was that tax liabilities included in the distributor's return should be included in the PILs calculation. Post-employment benefit liabilities are accrued by the entity that directly employs the future recipients of post-employment benefits, and are thus among the liabilities included in the distributor's tax return only if the distributor is the direct employer of the employees.

- 8) How should the materiality threshold be applied to determine which amounts should be trued up?

Incomplete Settlement:

Parts of this issue have been completely settled, and the remainder is unsettled.

Settled. The Parties agree that the Board's methodology required that input errors be corrected by the Applicant. The materiality threshold is zero; that is, all input errors must be corrected.

The Parties further agree that where the Board has made a final order disposing of account 1562, the materiality threshold as described in Issue #15 applies to corrections arising out of reassessments.

The Parties further agree that where the Board has not made a final order disposing of account 1562, the protocol as described in Issue #17 applies to corrections arising out of reassessments, including the use of a zero materiality threshold.

Reasons for Agreement:

Unsettled. The Parties do not agree on what materiality threshold, if any, should be used within the SIMPIL models. In the models originally issued to each Applicant, it was left to the Applicant to select the materiality level applicable in its discrete circumstances. The blank worksheet models issued by the Board had the materiality limit set to zero. Based on filing instructions, the distributors were asked to choose the materiality limit to be used in segregating material reconciling items from non-material reconciling items and to input that number in the applicable TAXREC worksheet cell.

Barrie and EnWin submitted SIMPIL worksheet models with a number inserted in the materiality threshold cell. In March 2010, Halton Hills submitted SIMPIL models where it selected zero as the materiality threshold.

Settled. The Parties agree that where the use of a materiality threshold within a model creates a mis-match between additions and deductions, this should be corrected by deeming both sides of the equation to surpass the materiality threshold if any one side surpasses the materiality threshold.

Halton Hills' revised models submitted in March 2010 eliminated the mis-match that existed in its original evidence. Rather than net the two related amounts for bad debts and inserting the net number in the SIMPIL worksheets, the model by virtue of having the materiality threshold set to zero correctly trued up both amounts. This eliminated the added complexity of having to identify related offsetting items in the tax return, then calculating the net amount, and inserting the correct net amount into the correct cell in the SIMPIL worksheets.

EnWin and Barrie did not have this mis-match problem in the SIMPIL worksheet evidence they each submitted.

While based on the most current evidence the mis-match does not apply to any of the Applicants, it is possible that through the resolution of various issues, by settlement or

hearing, the numbers and calculations will change such that one or more Applicants may face a mis-match. If a mis-match does arise as a result of the resolution of other issues, the terms of this settlement will govern the treatment of that mis-match.

9) What are the correct tax rates to use in the true-up variance calculations?

No Settlement

- 10) How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

No Settlement

- 11) Should the SIMPIL true up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

No Settlement

12) For the period January 1 to April 30, 2006 what variances should be considered for true-up?

Complete Settlement:

The Parties agree that the Board's methodology requires that the variances for true-up are the pro-rated PILs proxy amounts included in rates for those 4 months and the billed amounts and unbilled PILs amounts for those 4 months.

The Applicants have calculated the applicable monthly PILs proxy for the stub period and entered the amounts in their PILs summary worksheets. The Applicants have calculated the amounts billed to customers [Issue 5], as well as appropriate estimates of unbilled revenue [Issue 6], and entered that data in the PILs summary worksheets. Carrying charge interest for the four months was calculated and entered on the PILs summary worksheets.

Reasons for Agreement:

These items for true-up were subject to true-up throughout the operation of account 1562. However, since no tax returns were filed for those 4 months in 2006, there is nothing to assist in the determination of any additional true-up items other than the three items specifically identified in the previous paragraph.

- 13) Should the maximum interest expense allowable in rates be used as the threshold to determine the excess interest clawback? What is the consequence, if any, where actual debt levels exceeded deemed levels used for ratemaking purposes, resulting in the accumulation of a liability?

Complete Settlement

The Parties agree that the Board's methodology deemed the level of debt for ratemaking purposes, and the deemed interest rate, which resulted in the deemed interest expense that was included in the calculation of the PILs interest claw-back true-up amounts.

In the case of Applicants EnWin and Barrie, their treatment of deemed debt levels was consistent with this principle, as set out in Appendices X (page x) and Y (page y) respectively.

In the case of the Applicant Halton Hills, it filed PILs models on March 19, 2010 that reflected full interest claw-back, resulting in an April 30, 2006 Account 1562 balance of \$688,028 (ie. owed to customers).

However, Halton Hills' 1999 rates were adjusted upwards by the Board in order to eliminate a loss in the 1999 financial statements (see the Board's order dated August 13, 2001 in RP-2000-0193/ EB-2000-0428/ EB-2001-0141). As this utility-specific adjustment pre-dated the PILs methodology, the parties negotiated a corresponding reduction in the April 30, 2006 Account 1562 balance of \$688,208 to \$418,028, a reduction of \$270,000.

PowerStream does not agree with the settlement of this proposal. PowerStream's position is that the level of debt for each utility should be determined by reference to the prudence of the debt that a utility incurred and that a utility should be entitled to defend its debt level - and the consequence of its debt level on PILs -by reference to prudence. Having said this, Barrie Hydro, which merged into PowerStream, and which is a named applicant in this proceeding, is prepared to accept the cost implications of the settlement on this issue and does not believe that it is necessary for this issue to go to a hearing in this case. The remaining utilities that have merged into PowerStream (the "PowerStream South Utilities") reserve the right to address the prudence of their actual debt levels - and the consequence of their debt levels on PILs - in their utility specific proceedings.

Reasons for Agreement:

In "General Comments" note #12 of the January 18, 2002 PILs filing instructions the following information appeared: "Please note that the interest true-up calculation is set out in Section V ("Interest Portion of True-up") of Form TAXCALC. If a utility re-capitalizes early, the model will now not impose any clawback. However, a utility should carefully consider its position if it capitalizes beyond the Board-approved deemed debt." Footnote 12 in the same filing instructions stated that "True up for excess interest will apply as of the tax filing date."

In the SIMPIL filing instructions for 2002 RRR and subsequent years issued in 2003 (2004), true-up adjustments were identified on page 16. Under the third bullet it states: "actual interest expenses, including amount capitalized for accounting but deducted for tax, exceeding the deemed interest (taking into consideration a proration of a short taxation

year). Please note the interest true-up is calculated in Part V, Interest Portion of True-up.”
[Part V refers to a section of the SIMPIL TAXCALC worksheet.]

- 14) Should the final balances in account 1562 that will be approved for disposition be transferred to account 1590 Recovery of Regulatory Asset Balances or account 1595?

Complete Settlement:

The Parties agree that the Applicants should retain account 1562 and account 1563. The Applicants in this proceeding should progressively “zero” the balances as monthly disposition occurs, and not transfer balances to either account 1590 or 1595.

Under Issue 2 above, the Parties have agreed how the Applicants will reduce the balances in accounts 1562 and 1563 as future billings occur. Distributors who did not use method 3 as described in the Board’s FAQ of April 2003 may need to transfer the balances to account 1595.

Reasons for Agreement:

The Board has not issued a FAQ on disposition of account 1562 and account 1563. The Parties agree that it is reasonable that accounting for disposition would follow similar guidance to that used in the creation of the balances which was explained in the April 2003 FAQ.

Accounts 1562 and 1563 were last actively used (e.g. for purposes other than adding interest and making corrections as part of this proceeding) in early 2006. Through this Agreement, the Parties are seeking to close out the deferred PILs issue as it relates to the Applicants. Transferring balances to accounts 1590 or 1595 would be contrary to that objective. Keeping the balances isolated in accounts 1562 and 1563 and administering disposition and other resolution on that isolated basis is preferred.

- 15) Should the disposition of account 1562 be final in this proceeding? How and if at all should subsequent reassessments be handled in the future?

Complete Settlement:

The Parties agree that where the Board has made a final order disposing of account 1562, and an Applicant later receives a tax reassessment, the Applicant must rerun the applicable SIMPIL model for the regulatory PILs year that corresponds with the original tax return, using the reassessed figures, but otherwise in all cases in a manner consistent with the terms of this Settlement Agreement and the information set forth in Appendices X through Z.

Where the difference between the revised balance in account 1562, and the dollar amount ordered to be collected from or returned to ratepayers, exceeds 0.1% of the Applicant's revenue requirement as reflected in its most recent Cost of Service decision, the Applicant must file evidence in its next Cost of Service or IRM application explaining the reasons for this difference and proposing disposition of the difference in a manner consistent with the principles set forth in this Agreement.

The Parties agree that appropriate implementation will be the subject of those future Cost of Service and IRM applications, as applicable.

Reasons for Agreement:

The Board established the general use of materiality thresholds in the PBR 1 Handbook, 2006 EDR Handbook, IRM2 and IRM3 Reports of the Board, but did not establish a specific materiality threshold for reassessments relating to the Account 1562 balance.

In Section 3.2 on page 12 of the *2006 Electricity Distribution Handbook* it states:

“Non-routine/unusual for 2004 only and exceeding materiality threshold of 0.2% of total distribution expenses before PILs.”

A materiality threshold expressed as 0.1% of revenue requirement is an analogous threshold for most distributors as 0.2% of distribution expenses before PILs. Therefore, the Parties agree it is a reasonable choice for this situation, consistent in principle with materiality thresholds ordered by the Board in other situations.

- 16) If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?

Complete Settlement:

The Parties agree that interest is to be recalculated if necessary to follow any Board decision to recalculate principal balances. Interest may be calculated on a monthly basis using Excel spreadsheets designed for this purpose if the distributor chooses. Annual average interest calculations would also be acceptable. In the case of annual average interest calculations, the effective date of any recalculated principal amount will be assumed to occur at mid-year. The applicable interest rate approved by the Board for the period 2001 through April 30, 2006 would be used.

Reasons for Agreement:

Article 220 [pages 26 and 27] of the Accounting Procedures Handbook describes the calculation of carrying charges to be done on a monthly basis. The Applicants have all recalculated carrying charges on a monthly basis.

- 17) Should the final tax items in the original, amended, assessed or reassessed tax returns be used for the purposes of calculating true-up calculations?

Complete Settlement:

The Parties agree that where the Board has made a final order disposing of account 1562, the protocol described under Issue #15 applies.

The Parties further agree that where the Board has not made a final order disposing of account 1562, and the Applicant receives a tax reassessment, for any of the tax years 2001 to 2005 inclusive, the Applicant must rerun the applicable SIMPIL model using the reassessed figures. The model would be rerun for the regulatory PILs year that corresponds with the year of the original tax return that has been reassessed. Any incremental change to the balance in account 1562 must be disclosed, with supporting evidence, in the Applicant's application in which it seeks or is mandated to apply for disposition of account 1562. In this situation, there is no materiality threshold.

The Parties agree that ongoing appropriate implementation will be dealt with in that application for disposition, as determined by the Board based on the circumstances of the individual Applicant.

Reasons for Agreement:

The general principle is that the most recent information is to be provided to the Board for its use in deciding upon the disposition of deferral and variance accounts.

- 18) Should the dollar impact of the repeal of the federal Large Corporation Tax (LCT) applicable for the period January 1 to April 30, 2006 be recorded in account 1562?

Complete Settlement:

Halton Hills takes no position on this issue as Halton Hills was not subject to LCT.

The remaining Parties agree that the Board's methodology that was in place at the relevant times was for the dollar impact of the repeal of the federal Large Corporation Tax applicable for the period January 1 to April 30, 2006 to be recorded in account 1562 or account 1592. FAQ July 2007 describes the methodology for calculating the amounts to be recorded in accounts 1562 and 1592. Parties do not agree that a reference issued after April 30, 2006 should be used as an authority for the period up to April 30, 2006. However, the Parties agree that the proportion of grossed-up LCT from the 2005 EDR application model which applied to the four-month period from January 1 to April 30 2006 should be recorded in account 1562 as a reduction of the PILs obligation for that period.

Reasons for Agreement:

The Board has required in many proceedings that distributors must account for changes in tax legislation. The federal government repealed LCT retroactive to January 1, 2006. The distributor should account for the impact of this change in tax legislation.

- 19) How should the final balance in account 1562 be allocated to the customer classes for rate recovery?

Complete Settlement:

The Parties agree that allocation to customer classes should be performed on the basis of the test year distribution revenue allocation to customer classes found in the Applicant's Cost of Service application that was most recently approved at the time of disposition of the 1562 account balance.

Reasons for Agreement:

The Board has provided guidance on page 20 of the May 27, 2009 *Chapter 2 of the Filing Requirements for Transmission and Distribution Applications*, Section 2.8.3, Revenue to Cost Ratios and Appendix 2-P, Cost Allocation, page 45.

20) Over what time period should the final balance in account 1562 be disposed by rate rider?

Complete Settlement:

The Parties agree that the Board's methodology does not establish a specific time period for disposition. Rather, the Board should consider the time period for disposition on a case by case basis, considering the particular circumstances of the Applicant, customer bill impacts, and such other factors as the Board may at the time determine to be relevant.

Based on currently proposed balances for disposition:

- § PowerStream proposes that the Barrie disposition take place over one year;
- § EnWin proposes that its disposition take place over one year; and,
- § Halton Hills proposes that its disposition be deferred at this time and addressed in its Cost of Service Rate Application for rates effective May 1, 2012.

The Parties agree that based on the current balances, there disposition periods are appropriate. In the event that the balances change as a result of the Board's determinations in this matter, the Parties agree that revised positions may be expressed at a time and in a manner deemed appropriate by the Board (e.g. final submissions).

Reasons for Agreement:

The Board generally considers bill impacts in setting just and reasonable rates. The situation of each distributor will need to be reviewed in determining what time period serves the distributor and its customers best.

- 21) Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?

Complete Settlement:

The Parties agree that the calculation of carrying charges for the amounts proposed to be disposed of be based on a forecast up to the effective date of the rate change.

The interest rate should be the Board-approved prescribed interest rate for regulatory accounts as published on the Board's website for the quarter in which the calculation is made subsequent to April 30, 2006. For the period 2001 to April 30, 2006 the Board-approved deemed long-term debt rate for the distributor will be used.

The Applicants have proposed that interest carrying charges should be forecast to the date that the disposition order becomes effective using the Board's prescribed interest rate for regulatory accounts. See Issue 16.

Reasons for Agreement:

The Board's rate application models provide for the calculation of carrying charges using the Board's prescribed interest rates.

- 22) What billing determinant(s) should be used to recover the final amount in account 1562?
That is, by the fixed and variable charges, fixed charge only, or variable charge only?

Complete Settlement:

The Parties agree that the appropriate billing determinants are kWh or kW for classes billed on a volumetric basis and number of connections for classes billed on a per connection basis. Each Applicant should use the test year data from its most recently approved Cost of Service application that is available at the time the balances are cleared to derive a variable charge rate rider by class.

Reasons for Agreement:

The Board allowed the variable rate charge to be used to recover PILs in 2004 and 2005 EDR.

On page 24 of the *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative (EDDVAR)* it is stated:

"The Board agrees that a volumetric rate rider to dispose of the deferral and variance account balances is appropriate."

EB-2008-0381
Account 1562 - Deferred Payments in Lieu of Taxes (PILs)
Combined Proceeding
Appendix A to Proposed Settlement Agreement
September 30, 2010

This Appendix lists some of the documents and evidence on the record of this proceeding that the parties suggest would be relevant to the Board in its consideration of the settled issues. In addition, where there has been no settlement on an issue, selected documents and evidence on the record to date have been listed for ease of reference. Parties anticipate that additional evidence will be adduced on the unsettled issues during the oral hearing.

The Board documents referred to below (Board documents have a year at the beginning of the title) have been posted to the PILs web page on the Board website for ease of reference. All documents and evidence referred to below can be found in the webdrawer file at:

http://www.rds.oeb.gov.on.ca/webdrawer/webdrawer.dll/webdrawer/search/rec?sm_udf10=*EB-2008-0381*&sort1=rs_dateregistered&rows=200

Issue 1: How should the stand-alone principle be applied in this proceeding?

e.g. Should the Large Corporation Tax and Ontario Capital Tax thresholds/ exemptions be pro-rated among regulated and non-regulated companies in the corporate group or allocated for regulatory purposes 100%? Should the PILs tax proxy (expense) be based on the revenues, costs and expenses associated only with the distribution activities?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Appendix B, page 1, bullets 3 and 5; Footnotes 17B, 20A&B
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 16, page 7; Item 19, page 8.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Interest deduction, page 58; Sharing of tax exemptions, page 59.
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** Chapter 7, paragraph 7.2.2
- Barrie, 03/12/2010, IRRs # 5
- Halton Hills, 03/15/2010, IRRs # 4
- EnWin, 03/19/2010, IRRs # 5

Issue 2: Does the balance in account 1562 establish the obligation to, or the receivable from, the distributor's ratepayers? How should the 1563 contra account be cleared in conjunction with the disposition of the 1562 control account?

- 2003_APH_FAQs_April2003.pdf **Ref:** pages 8 – 9
- Barrie, 05/27/2009, IRRs # 51
- Halton Hills, 06/02/2009, IRRs # 53
- EnWin, 04/30/2009, IRRs # 55

Issue 3: Has the utility correctly applied the true up variance concepts established by the Board's guidance?

- 2001_PILs letter_Announce Consultation 2001_240801.pdf
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** page 1, II PILs Provision, paragraph 2; b) vi) Capital Taxes.
- 2003_APH_FAQs_April2003.pdf **Ref:** page 5, entry 2
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 3, Security of the SIMPIL spreadsheets
- 2005_SIMPIL_AppendicesAB_RRR_2.1.8_Dec.31,2004_Tax Year.pdf **Ref:** Item 20

- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** pages 6, Tax Rates Spreadsheet, pages 8-9.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, page 13.
- Barrie, 05/27/2009, IRRs # 1,4,10,12,13, 14, 15, 18,19,21,22, 24, 27, 28, 33, 49, 50
- Barrie, 03/12/2010, IRRs # 4, 6, 13, 14
- Halton Hills, 06/02/2009, IRRs # 13, 16, 17, 21, 24, 26, 28, 29, 30, 51, 52
- Halton Hills, 03/15/2010, IRRs # 5, 6, 7, 8, 34
- EnWin, 04/30/2009, IRRs # 4, 5, 6, 7, 8, 18, 21, 24, 27, 30, 32, 33, 53, 54
- EnWin, 03/19/2010, IRRs # 6, 7,

Issue 4: How should tax impacts of regulatory asset movements from 2001 to 2005 tax years be dealt with in the PILs true up model reconciliation?

- 2001_Financial Distress_PILs_Letter_Sep.17,2001.pdf **Ref:** Method#1, page 3, step 6, bullet 2.
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** II PILs Provision, page 3, b) iii) Transition Costs, bullet 2.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 8, Item 5; page 9, Item 10.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Chapter 7, Regulatory assets and liabilities, page 61.
- 2005_SIMPIL_AppendicesAB_RRR_2.1.8_Dec.31,2004_Tax Year.pdf **Ref:** Appendix A Items 5 & 10.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 5, page 5; item 10, page 6.
- 2008_EnWin_EB-2007-0522_Decision_Order_20080104.pdf
- Barrie, 05/27/2009, IRRs # 6, 8, 9, 17, 20, 23.
- Barrie, 03/12/2010, IRRs # 7
- Halton Hills, 06/02/2009, IRRs # 4, 12, 18, 19, 22, 23
- EnWin, 04/30/2009, IRRs # 15, 16, 17, 22, 23, 25, 26, 28, 29,
- EnWin, 03/19/2010, IRRs # 8, 9

Issue 5: Have the applicants appropriately calculated or determined the PILs tax amounts billed to customers?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2003_APH_FAQs_April2003.pdf **Ref:** pages 8 - 9
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheets 7-8
- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** PILs 1562 Calculation, pages 9-10.
- Barrie, 05/27/2009, IRRs # 37, 38, 39
- Barrie, 03/12/2010, IRRs # 8
- Halton Hills, 06/02/2009, IRRs # 40, 41, 42
- Halton Hills, 03/15/2010, IRRs # 10
- EnWin, 04/30/2009, IRRs # 43, 44, 45,

- EnWin, 03/19/2010, IRRs # 10

Issue 6: How should unbilled revenue be treated in the amounts recorded in 1562 relating to billings to customers? If information is not available to calculate unbilled revenue as at April 30, 2006 how should this be treated in the proceeding?

- No specific instructions
- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheets 7-8
- Barrie, 05/27/2009, IRRs # 40, 41.
- Barrie, 03/12/2010, IRRs # 9
- Halton Hills, 06/02/2009, IRRs # 33, 43, 44
- Halton Hills, 03/15/2010, IRRs # 11
- EnWin, 04/30/2009, IRRs # 46, 47
- EnWin, 03/19/2010, IRRs # 11

Issue 7: If a regulated distributor has a service company or parent company that provides services to the LDC, and the service company or parent charges the distribution utility for labour including all overhead burdens, should the change in the post-employment benefit liability be reflected in the distributor's PILs reconciliations?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** II PILs Provision, page 4, b) v) Employee Benefits.
- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Footnotes 4 & 9
- Barrie, 03/12/2010, IRRs # 10
- Halton Hills, 03/15/2010, IRRs # 12
- EnWin, 04/30/2009, IRRs # 9, 10, 11, 12, 13, 14
- EnWin, 03/19/2010, IRRs # 12

Issue 8: How should the materiality threshold be applied to determine which amounts should be trueed up?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Notes to Proxy Model, General Comments, #9; Footnotes 7 and 13.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 15, paragraph 3.
- 2006_SIMPIL_2005 tax year_appendix A, B_040706.pdf **Ref:** Appendix A, Item 6, page 6; item 12, page 7.
- Barrie, 03/12/2010, IRRs # 11, 13, 14
- Halton Hills, 03/15/2010, IRRs # 13
- EnWin, 03/19/2010, IRRs # 13

Issue 9: What are the correct tax rates to use in the true-up variance calculations?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** Notes to Proxy Model, General Comments, #7; Footnotes 14 and 15C.

- 2003_APH_FAQs_April2003.pdf **Ref:** page 4, footnote 1.
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 15, Miscellaneous Tax Credits; page 17, tax rates, first 5 paragraphs.
- 2006_SIMPIL_2005 tax year_instructions_040706.pdf **Ref:** page 6
- 2009_T2 Corporation Income Tax Return.pdf
- Barrie, 05/27/2009, IRRs # 2, 3, 4, 10, 12, 14, 15, 16, 22, 25,
- Barrie, 03/12/2010, IRRs # 4, 12, 13, 14
- Halton Hills, 06/02/2009, IRRs # 3, 5, 6, 7, 8, 9, 10, 14, 15,
- Halton Hills, 03/15/2010, IRRs # 14
- EnWin, 04/30/2009, IRRs # 3, 19, 20,
- EnWin, 03/19/2010, IRRs # 14

Issue 10: How should the continued collection of the 2001 PILs amount in rates be considered in the operation of the PILs deferral account?

- “Decisions for Rates Effective March 1, 2002”, filed as Exhibit 3 on Issues Day
- Barrie, 05/27/2009, IRRs # 26, 29, 30.
- Barrie, 03/12/2010, IRRs # 15
- Halton Hills, 06/02/2009, IRRs # 31, 32,
- Halton Hills, 03/15/2010, IRRs # 15
- EnWin, 04/30/2009, IRRs # 35, 36,
- EnWin, 03/19/2010, IRRs # 15
- CLD Appendix #3, 02/09/2010

Issue 11: Should the SIMPIL true up to specified items from tax filings be recorded in the period after the 2002 rate year until the 2001 deferral account allowance was removed from rates?

- Barrie, 05/27/2009, IRRs # 26, 29, 30, 31.
- Barrie, 03/12/2010, IRRs # 15
- Halton Hills, 03/15/2010, IRRs # 15
- EnWin, 04/30/2009, IRRs # 35, 36
- EnWin, 03/19/2010, IRRs # 15
- CLD Appendix #3, 02/09/2010

Issue 12: For the period January 1 to April 30, 2006 what variances should be considered for true-up?

- 2003_APH_FAQs_April2003.pdf **Ref:** page 2 Q.2 bullet 1
- Barrie, 05/27/2009, IRRs # 26, 31
- Barrie, 03/12/2010, IRRs # 16
- Halton Hills, 06/02/2009, IRRs # 34
- Halton Hills, 03/15/2010, IRRs # 16
- EnWin, 04/30/2009, IRRs # 37
- EnWin, 03/19/2010, IRRs # 16

Issue 13: Should the maximum interest expense allowable in rates be used as the threshold to determine the excess interest clawback? What is the consequence, if any, where actual debt levels exceeded deemed levels used for ratemaking purposes, resulting in the accumulation of a liability?

- 2002_Application_PILs_proxy_notes_180102.pdf **Ref:** #12 and Footnote 12
- 2004_SIMPIL-Model Guide_210704_December 31, 2003 Tax Year.pdf **Ref:** Page 16, Items to be included in True-up Adjustments, bullet 3.
- 2006_EDR Handbook_Board Report_110505.pdf **Ref:** Interest deduction, page 58.
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** Chapter 7, s.7.2.6 Interest deduction, page 63; Schedule 7-3 Interest Expense, page 69.
- Barrie, 03/12/2010, IRRs # 17, 18
- Halton Hills, 06/02/2009, IRRs # 11, 20, 25
- Halton Hills, 03/15/2010, IRRs # 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 33, 34,
- Halton Hills, 03/24/2010, IRRs # 21
- EnWin, 03/19/2010, IRRs # 17

Issue 14: Should the final balances in account 1562 that will be approved for disposition be transferred to account 1590 Recovery of Regulatory Asset Balances or account 1595?

- No specific instruction
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 53
- EnWin, 04/30/2009, IRRs # 55
- EnWin, 03/19/2010, IRRs # 18

Issue 15: Should the disposition of account 1562 be final in this proceeding? How and if at all should subsequent reassessments be handled in the future?

- No specific instruction
- Barrie, 05/27/2009, IRRs # 48
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 50
- EnWin, 04/30/2009, IRRs # 52
- EnWin, 03/19/2010, IRRs # 18

Issue 16: If the PILs principal variances were re-calculated, how should the interest carrying charges be re-calculated?

- No specific instruction
- 2001_APH_USoA_Art 210 to 240_201201.pdf **Ref:** page 8
- 2007_APH_FAQs_July2007.pdf **Ref:** Q.5
- Barrie, 05/27/2009, IRRs # 34, 35, 36, 43, 44.
- Barrie, 03/12/2010, IRRs # 19
- Halton Hills, 06/02/2009, IRRs # 37, 38, 39
- EnWin, 04/30/2009, IRRs # 41, 42
- EnWin, 03/19/2010, IRRs # 18

Issue 17: Should the final tax items in the original, amended, assessed or reassessed tax returns be used for the purposes of calculating true-up calculations?

- No specific instruction
- Barrie, 05/27/2009, IRRs # 32, 33
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 35, 36
- EnWin, 04/30/2009, IRRs # 38, 39
- EnWin, 03/19/2010, IRRs # 18

Issue 18: Should the dollar impact of the repeal of the federal Large Corporation Tax applicable for the period January 1 to April 30, 2006 be recorded in account 1562?

- 2007_APH_FAQs_July2007.pdf **Ref:** Q. 1 - 5
- Barrie, 05/27/2009, IRRs # 42
- Barrie, 03/12/2010, IRRs # 20
- EnWin, 04/30/2009, IRRs # 40
- EnWin, 03/19/2010, IRRs # 18

Issue 19: How should the final balance in account 1562 be allocated to the customer classes for rate recovery?

- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheet 7
- 2006_EDR_Rate Handbook_110505.pdf **Ref:** s.9.2, page 76-77.
- Ref: Barrie, 03/12/2010, IRRs # 21
- Ref: EnWin, 03/19/2010, IRRs # 18

Issue 20: Over what time period should the final balance in account 1562 be disposed by rate rider?

- No specific instruction, but consistent with general regulatory policy e.g. EDDVAR
- Barrie, 05/27/2009, IRRs # 46
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 48,
- EnWin, 04/30/2009, IRRs # 50
- EnWin, 03/19/2010, IRRs # 18

Issue 21: Should interest carrying charges be forecast to a future date of disposition? If so, what date? What interest rate(s) should be used?

- No specific instruction, but Board has allowed this method for calculation of carrying charges for recovery.
- 2004_Regulatory Asset Decision_091204.pdf **Ref:** paragraphs: 9.0.9; 9.0.12; 10.0.12; 10.0.19.
- Barrie, 05/27/2009, IRRs # 45
- Barrie, 03/12/2010, IRRs # 21

- Halton Hills, 06/02/2009, IRRs # 47
- EnWin, 04/30/2009, IRRs # 49
- EnWin, 03/19/2010, IRRs # 18

Issue 22: What billing determinant(s) should be used to recover the final amount in account 1562? That is, by the fixed and variable charges, fixed charge only, or variable charge only?

- 2002_Applications_RAM Instructions_Jan18,2002.pdf **Ref:** Appendix A, pages 3-4, Sheet 6, 7, 8, 9.
- 2004_Applications_Reg Assets_Phase 1_Regulatory Asset Filing Guidelines_150104.pdf **Ref:** Appendix A, page 2, Sheet 7
- Barrie, 05/27/2009, IRRs # 47
- Barrie, 03/12/2010, IRRs # 21
- Halton Hills, 06/02/2009, IRRs # 49
- EnWin, 04/30/2009, IRRs # 51
- EnWin, 03/19/2010, IRRs # 18

APPENDIX C

TO

**DECISION AND ORDER
ACCOUNT 1562 DEFERRED PILs**

EB-2008-0381

DECISION AND PROCEDURAL ORDER No. 9



EB-2008-0381

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

AND IN THE MATTER OF a proceeding commenced by the
Ontario Energy Board on its own motion to determine the
accuracy of the final account balances with respect to
account 1562 Deferred PILs (for the period October 1, 2001
to April 30, 2006) for certain 2008 and 2009 distribution rate
applications before the Board.

BEFORE: Ken Quesnelle
Presiding Member

Cynthia Chaplin
Chair and Member

DECISION AND PROCEDURAL ORDER No. 9

On November 28, 2008, pursuant to sections 78, 19 (4) and 21 (5) of the *Ontario Energy Board Act, 1998*, the Ontario Energy Board commenced a proceeding on its own motion to determine the accuracy of the final account balances with respect to account 1562 Deferred PILs (for the period October 1, 2001 to April 30, 2006) for certain applicants that filed 2008 and 2009 distribution rate applications before the Board. The Board announced its intention to hold such a proceeding in a letter to all distributors issued on March 3, 2008 and assigned this proceeding file number EB-2007-0820, now updated to EB-2008-0381.

In accordance with Procedural Order No. 3, three distributors that submitted evidence, namely, ENWIN Utilities Ltd. (ENWIN), Halton Hills Hydro Inc. (Halton Hills), and Barrie Hydro Distribution Inc. (Barrie) became the applicants for this phase of the proceeding.

Following a series of procedural steps, including the identification of issues, the submission of evidence and an interrogatory process, the parties to the proceeding met to attempt to reach agreement on some or all of the issues in the proceeding. A proposed Settlement Agreement was filed with the Board on September 30, 2010.

Included in the Settlement Agreement are seventeen (17) issues where the parties reached complete settlement, two issues that contain aspects resulting in partial settlement and three issues where no settlement was reached.

On November 4, 2010 the Board requested submissions as to whether the tax periods of 2001 through 2005 were statute-barred, and how the movements of regulatory assets, liabilities and collections were dealt with in the settlement of ENWIN's regulatory asset issue. Replies from the applicants were received by November 19, 2010. Each of ENWIN and Halton Hills responded that they had been assessed for the tax years 2001-2005 and that those were now statute-barred. Barrie responded that it had been assessed for the 2001-2004 tax years and that it now considered those years statute-barred but that, with respect to 2005, it had amended its return and was re-assessed in 2007 and that therefore the 2005 year was not statute-barred for Barrie. ENWIN, in consultation with CCC and SEC, provided the details of the parties' considerations that led to the settlement position on ENWIN's regulatory asset issue.

Board Findings

While the Settlement Agreement is not binding on any party but the parties to the Settlement Agreement, in accepting any of the elements of the Settlement Agreement the Board does accept the general principles that arise from those elements with respect to the issues within the scope of this proceeding. The Board intends, where appropriate, to apply such principles when considering applications from the remaining distributors; that is, those that were not parties to this proceeding.

The Board has examined the Settlement Agreement and accepts all of the terms of the agreement as filed by the parties on September 30, 2010 with the exception of issue

number 15 which proposed to maintain the existence of account number 1562 after the Board approves final disposition.

The Board sees no merit in maintaining this account unless a distributor can demonstrate that any of its tax periods are not statute-barred. In this proceeding, only Barrie has identified that its 2005 tax year remains open because an amended return for 2005 was filed in 2007 and therefore the Board will allow the account to remain open in Barrie's situation to capture any changes that may result from potential tax payment reassessments. The Board also intends to apply this principle, as stated above to those remaining distributors that were not parties to this proceeding.

The Board has accepted issue number 4 pertaining to ENWIN's regulatory asset issue and expects that the details of the considerations that led to the proposal will inform other distributors and stakeholders that may have experienced similar circumstances. However, the Board expects that there will likely be other considerations when dealing with the circumstances of other distributors and therefore the terms of this particular settled issue have limited precedential value.

The Board commends the parties on achieving settlement of the majority of the twenty-two (22) issues.

This is a unique agreement in that the settlement of each issue is independent of the settlement of all other issues. In this proceeding there was no envelope of costs to which the parties agreed. Rather, the settlements have dealt primarily with how a number should be derived or calculated. Once the Board decides on the remaining unsettled issues, the parties will have to reflect the decision in the numerical worksheets to generate the final residual amount in Account 1562. It will be this dollar amount, plus the applicable carrying charges, that the Board will approve to be incorporated into a future rate order.

Procedural Matters

On October 7, 2010 the Board received a letter from ENWIN, writing on behalf of all parties, that set out proposed next steps including: 1) a Settlement Proposal Panel Day; 2) written submissions from Board staff with respect to the unsettled issues; 3) written submissions from the parties with respect to the unsettled issues; and 4) an audience with the Board for parties to make oral response and reply submissions. While the

Board agrees that the next steps should include the filing of submissions from Board staff and the parties, the Board does not consider a Settlement Proposal Panel Day or audience with the Board, as suggested in items #1 and #4 respectively, necessary at this time.

The Board considers it necessary to make provision for the following procedural matters. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. Board staff will file its submissions on the unsettled issues by December 24, 2010 and serve a copy on the parties in the proceeding.
2. Applicants and intervenors will file submissions with the Board by January 21, 2011 and serve a copy on the parties in the proceeding.
3. Board staff may file a reply submission responding to the applicants and intervenors by January 31, 2011 and serve a copy on the parties in the proceeding.
4. Applicants and intervenors may file a sur-reply to Board staff's reply and replies to other applicants' and intervenors' submissions, as well as further procedural steps, if any, that applicants and intervenors may consider necessary. Applicants and intervenors shall file their sur-replies and replies by February 7, 2011.

DATED at Toronto, December 23, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary



MIDLAND POWER UTILITY CORPORATION

16984 Highway#12 P.O. Box 820

Midland Ontario L4R 4P4

January 27, 2012

Ontario Energy Board
2300 Yonge Street
26th Floor
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Sirs:

Re: Midland Power Utility Corporation – 2012 IRM3 Rate Application
Licence #ED 2002-0541; Board File No. EB-2011-0182

Enclosed please find Midland's response to Board Staff Interrogatories due January 27, 2012 filed under the RESS filing system today. Should you have any questions please do not hesitate to contact the writer.

Yours very truly,

MIDLAND POWER UTILITY CORPORATION

PHIL MARLEY, CMA
President & CEO
Tel: (705)526-9362 ext 204
Fax: (705) 526-7890
E-mail: pmarley@midlandpuc.on.ca

**Midland Power Utility Corporation
2012 Electricity Distribution Rates
EB-2011-0182**

Midland PUC Response to Board Staff Interrogatories

1. Disposition during 2010

Ref: Rate Generator Model

Ref: Midland Power's 2010 IRM Decision and Order (EB-2009-0236), p. 12

A portion of Sheet "9. Cont. Sched. Def_Var" from the Rate Generator Model is reproduced below.

		2010						
Account Descriptions	Account Number	Opening Principal Amounts as of Jan-1-10	Transactions Debit / (Credit) during 2010 excluding interest and adjustments ¹	Board-Approved Disposition during 2010	Other ¹ Adjustments during Q1 2010	Other ¹ Adjustments during Q2 2010	Other ¹ Adjustments during Q3 2010	Other ¹ Adjustments during Q4 2010
LV Variance Account	1550	-\$ 63,027	-\$ 74,510					
RSVA - Wholesale Market Service Charge	1580	-\$ 35,207	-\$ 237,679					
RSVA - Retail Transmission Network Charge	1584	\$ 58,499	\$ 37,541					
RSVA - Retail Transmission Connection Charge	1586	-\$ 370,307	-\$ 14,157					
RSVA - Power (excluding Global Adjustment)	1588	\$ 377,777	-\$ 172,033					
RSVA - Power - Sub-Account - Global Adjustment	1588	\$ 340,493	-\$ 156,941					
Recovery of Regulatory Asset Balances	1590	\$ -						
Disposition and Recovery of Regulatory Balances (2008) ⁷	1595	\$ -						
Disposition and Recovery of Regulatory Balances (2009) ⁷	1595	\$ -						
Group 1 Sub-Total (including Account 1588 - Global Adjustment)		\$ 308,230	-\$ 617,779	\$ -	\$ -	\$ -	\$ -	\$ -
Group 1 Sub-Total (excluding Account 1588 - Global Adjustment)		-\$ 32,284	-\$ 460,638	\$ -	\$ -	\$ -	\$ -	\$ -
RSVA - Power - Sub-Account - Global Adjustment	1588	\$ 340,493	-\$ 156,941	\$ -	\$ -	\$ -	\$ -	\$ -
Special Purpose Charge Assessment Variance Account	1521	\$ -						
Deferred Payments in Lieu of Taxes	1562	\$ 125,178						
Group 1 Total + 1521 + 1562		\$ 433,408	-\$ 617,779	\$ -	\$ -	\$ -	\$ -	\$ -
The following is not included in the total claim but are included on a memo basis:								
Board-Approved CDM Variance Account	1567							
PLTs and Tax Variance for 2006 and Subsequent Years (excludes sub-account and contra account below)	1592							
PLTs and Tax Variance for 2006 and Subsequent Years - Sub-Account HST/OVAT Input Tax Credits (ITCs)	1592							
PLTs and Tax Variance for 2006 and Subsequent Years - Sub-Account HST/OVAT Contra Account	1592	\$ -						
Disposition and Recovery of Regulatory Balances ⁷	1595	-\$ 189,357	-\$ 606,541					

Account Descriptions	Account Number	Closing Principal Balance as of Dec-31-10	Opening Interest Amounts as of Jan-1-10	Interest Jan-1 to Dec-31-10	Board-Approved Disposition during 2010	Adjustments during 2010 - other ¹	Closing Interest Amounts as of Dec-31-10
LV Variance Account	1550	-\$ 137,536	-\$ 94	-\$ 899			-\$ 993
RSVA - Wholesale Market Service Charge	1580	-\$ 272,886	-\$ 99	-\$ 1,305			-\$ 1,405
RSVA - Retail Transmission Network Charge	1584	\$ 96,040	\$ 231	\$ 488			\$ 719
RSVA - Retail Transmission Connection Charge	1586	-\$ 384,464	-\$ 1,875	-\$ 3,096			-\$ 4,971
RSVA - Power (excluding Global Adjustment)	1588	\$ 205,744	\$ 1,585	\$ 1,253			\$ 2,838
RSVA - Power - Sub-Account - Global Adjustment	1588	\$ 183,553	\$ 723	\$ 1,658			\$ 2,382
Recovery of Regulatory Asset Balances	1590	\$ -	\$ -				\$ -
Disposition and Recovery of Regulatory Balances (2008) ⁷	1595	\$ -	\$ -				\$ -
Disposition and Recovery of Regulatory Balances (2009) ⁷	1595	\$ -	\$ -				\$ -
Group 1 Sub-Total (including Account 1588 - Global Adjustment)		-\$ 309,549	\$ 471	-\$ 1,901	\$ -	\$ -	-\$ 1,430
Group 1 Sub-Total (excluding Account 1588 - Global Adjustment)		-\$ 493,102	-\$ 253	-\$ 3,559	\$ -	\$ -	-\$ 3,812
RSVA - Power - Sub-Account - Global Adjustment	1588	\$ 183,553	\$ 723	\$ 1,658	\$ -	\$ -	\$ 2,382
Special Purpose Charge Assessment Variance Account	1521	\$ -					\$ -
Deferred Payments in Lieu of Taxes	1562	\$ 125,178	\$ 44,787	\$ 998			\$ 45,786
Group 1 Total + 1521 + 1562		-\$ 184,371	\$ 45,258	-\$ 903	\$ -	\$ -	\$ 44,355
The following is not included in the total claim but are included on a memo basis:							
Board-Approved CDM Variance Account	1567	\$ -	\$ -				\$ -
PLTs and Tax Variance for 2006 and Subsequent Years (excludes sub-account and contra account below)	1592	\$ -	\$ -				\$ -
PLTs and Tax Variance for 2006 and Subsequent Years - Sub-Account HST/OVAT Input Tax Credits (ITCs)	1592	\$ -	\$ -				\$ -
PLTs and Tax Variance for 2006 and Subsequent Years - Sub-Account HST/OVAT Contra Account	1592	\$ -	\$ -				\$ -
Disposition and Recovery of Regulatory Balances ⁷	1595	-\$ 795,898	\$ 2,659	\$ 509,194			\$ 511,853

- a) Please indicate where the Board approved disposition amounts during 2010 were accounted for on the 2010 portion of the continuity schedule.
-

Response:

In the Application filed herein, the 2010 disposition amounts were accounted for in the "Transactions Debit/Credit for 2010" column. Midland PUC has updated the continuity schedule separating the approved dispositions in 2010. In addition Midland PUC has recorded entries in the "Adjustments during 2010 – other" column. The adjustments represent the interest differential balances remaining with respect to the 2009 accounts. In 2010 these amounts were booked to Account #6035 – Other Interest expenses sub account for variance accounts. This amended schedule has been filed with this IR Response under Midland 2012_IRM_Rate_Generator V1_4_20120119.

2. Taxable Capital

Ref: Tax Savings Model

A portion of Sheet "5. Z-Factor Tax Changes" from the Tax Savings is reproduced below.

For the 2009 year, enter any Tax Credits from the Cost of Service Tax Calculation (Positive #)	\$	-	
1. Tax Related Amounts Forecast from Capital Tax Rate Changes			
	2009	2012	
Taxable Capital	\$ 11,361,794	\$ 11,361,794	
Deduction from taxable capital up to \$15,000,000	\$ 11,361,794	\$ 11,361,794	
Net Taxable Capital	\$ -	\$ -	
Rate	0.225%	0.000%	
Ontario Capital Tax (Deductible, not grossed-up)	\$ -	\$ -	

a) Board Staff is unable to verify the 2009 Taxable Capital amount of \$11,361,794.

Please provide the source of this number.

Response:

Attached as Schedule "A" to this response are two schedules from the 2009 tax filings:

- CT 23: Taxable Capital 2009 ON Sch 515; and
- T1: Taxable Capital 2009 Sch 33

3. Account 1521 – Special Purpose Charge (“SPC”)

Ref: Manager’s Summary, Page 9 to 10.

- a) Please confirm Midland Power’s SPC assessment amount and provide a copy of the original SPC invoice.
- b) Please complete the following table related to the SPC.

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)

Response:

- a) Midland PUC’s SPC assessment amount is \$82,891. A copy of the invoice is reproduced in Table 1 below.

Table 1: SPC Assessment

Revised Invoice Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs							
To: Midland Power Utility Corporation, ED-2002-0541 16984 Highway #12 P.O. Box 820 Midland, ON L4R 4P4 Attn: Phil Marley, CFO	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Customer No./No du client 3498</td> </tr> <tr> <td>Customer Site No./ N° d'emplacement du client 1061052</td> </tr> <tr> <td>Invoice Date/Date de la facture April 16, 2010</td> </tr> <tr> <td>Invoice No./ N° de la facture 50046</td> </tr> <tr> <td>Due Date/ Date d'échéance July 30, 2010</td> </tr> <tr> <td>Payment Amount/ Montant remis CAD \$ 82,891</td> </tr> </table>	Customer No./No du client 3498	Customer Site No./ N° d'emplacement du client 1061052	Invoice Date/Date de la facture April 16, 2010	Invoice No./ N° de la facture 50046	Due Date/ Date d'échéance July 30, 2010	Payment Amount/ Montant remis CAD \$ 82,891
Customer No./No du client 3498							
Customer Site No./ N° d'emplacement du client 1061052							
Invoice Date/Date de la facture April 16, 2010							
Invoice No./ N° de la facture 50046							
Due Date/ Date d'échéance July 30, 2010							
Payment Amount/ Montant remis CAD \$ 82,891							
Item Description: Assessment for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs. Quote-part pour les coûts des programme de conservation et d'énergie renouvelable du ministère de l'Énergie et de l'Infrastructure.							
<p><i>Questions related to the remittance should be directed to the Non-Tax Revenue Management Branch Contact Centre at 1-877-535-0554 or Fax (416) 326-5177. Les questions concernant la remise doivent être posées à l'InfoCentre de la Direction de la gestion des revenus non fiscaux au 1 877 535-0554 ou par télécopieur au 416 326-5177.</i></p> <p><i>This assessment was calculated by the Ontario Energy Board, 2300 Yonge St. 27th Floor, P.O. Box 2319, Toronto, ON M4P 1E4. Questions related to the invoice should be directed to the Market Operations Hotline 416-440-7604. La présente quote-part a été fixée par la Commission de l'énergie de l'Ontario, 2300, rue Yonge, 27^e étage, case postale 2319, Toronto (Ontario) M4P 1E4. Les questions relatives à la facture doivent être posées au service de téléassistance du service Activités du marché : 416 440-7604.</i></p> <p><i>Payments are to be made to the Minister of Finance not the Ontario Energy Board. Les paiements doivent être faits au ministre des Finances et non à la Commission de l'énergie de l'Ontario.</i></p>							
Detach here/ Détacher ici							
<p>Ministry of Finance/Ministère des Finances Payment Processing Centre/Centre de traitement des paiements 33 King St. West/33 rue King Ouest PO Box 647/CP 647 Oshawa, ON L1H 8X3</p> <p><small>Please detach and return this portion with your payment in the enclosed envelope. Make your cheque or money order payable to the Minister of Finance. Veuillez détacher et retourner cette partie avec votre remise dans l'enveloppe ci-jointe. Libeller votre chèque ou votre mandat à l'ordre du ministre des Finances.</small></p> <p>Midland Power Utility Corporation, ED-2002-0541 16984 Highway #12 P.O. Box 820 Midland, ON L4R 4P4 Attn: Phil Marley, CFO</p> <p>45 AR 50046</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Customer No./ N° du client 3498</td> </tr> <tr> <td>Customer Site No./ N° d'emplacement du client 1061052</td> </tr> <tr> <td>Invoice No./ N° de la facture 50046</td> </tr> <tr> <td>Payment Amount / Montant remis CAD \$</td> </tr> </table>	Customer No./ N° du client 3498	Customer Site No./ N° d'emplacement du client 1061052	Invoice No./ N° de la facture 50046	Payment Amount / Montant remis CAD \$		
Customer No./ N° du client 3498							
Customer Site No./ N° d'emplacement du client 1061052							
Invoice No./ N° de la facture 50046							
Payment Amount / Montant remis CAD \$							

b) Table 2 provides a summary of Account #1521 – Special Purpose Charge (SPC)

Table 2: SPC Summary Account #1521

Midland Power Utility Corporation										
Summary of Account #1521 - Special Purpose Charge (SPC)										
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	December 31, 2011 Year End Principal Balance	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)

4. LRAM Claims

Ref: Burman Energy Consulting Group Inc. LRAM Support, Oct. 19, 2011

Midland PUC has requested an LRAM recovery associated with 2006 to 2010 CDM programs for a total amount of \$76,737.50.

- a) Please confirm that Midland PUC used final 2010 program evaluation results from the OPA to calculate its LRAM amount.
- b) If Midland PUC did not use final 2010 program evaluation results from the OPA, please explain why and update the LRAM amount accordingly.
- c) Please discuss Midland PUC's prior LRAM applications and the amounts it has recovered.
- d) Please confirm that Midland PUC has not received any of the lost revenues requested in this application in the past. If Midland PUC has collected lost revenues related to programs applied for in this application, please discuss the appropriateness of this request.
- e) Please identify the CDM savings that were included in Midland PUC's last Board approved load forecast.
- f) Please provide a table that shows the LRAM amounts requested in this application by the year they are associated with and the year the lost revenues took place, divided by rate class within each year. Use the table below as an example and continue for all the years LRAM is requested:

Program Years (Divided by rate class)	Years that lost revenues took place			
	2006	2007	2008	2009
2006	\$xxx	\$xxx	\$xxx	\$xxx
2007	\$xxx	\$xxx	\$xxx	\$xxx
2008	\$xxx	\$xxx	\$xxx	\$xxx
2009		\$xxx	\$xxx	\$xxx
2010			\$xxx	\$xxx

- g) Please discuss if Midland PUC is applying for carrying charges on the LRAM amounts requested in this application.
- h) If Midland PUC is requesting carrying charges, please provide a table that shows the monthly LRAM balances, the Board-approved carrying charge rate

and the total carrying charges by month for the duration of this LRAM request to support your request for carrying charges. Use the table below as an example:

Year	Month	Monthly Lost Revenue	Closing Balance	Interest Rate	Interest \$

Response:

a) At the time of filing Midland PUC's 2012 IRM the final 2010 program evaluation results were not available from the OPA. Consequently Midland PUC 's LRAM claim used the following results as provided by the OPA:

- 2006-2009 Final OPA CDM Results – Update Midland Power Utility Corporation
- 2010 Final CDM Results Summary Midland Power Utility Corporation

b) The 2006-2010 finalized OPA Detailed report was not available at the time of filing. The LRAM Claim has subsequently been updated to use the finalized 2006-2010 OPA CDM Detailed Results. Table 3 below provides a comparison of the Original Submission with the updated LRAM taking into consideration the 2006-2010 finalized OPA results.

Table 3: 2006-2010 OPA Results vs. Original Submission

Rate Class	Original Submission LRAM \$	Updated LRAM \$	Variance
<u>OPA Programs</u>			
RESIDENTIAL	\$35,022.55	\$35,081.39	-\$58.84
GENERAL SERVICE <50KW	\$19,707.65	\$19,728.80	-\$21.15
GENERAL SERVICE >50KW	\$22,007.29	\$14,824.81	\$7,182.48
	\$76,737.50	\$69,635.00	\$7,102.49

c) In the 2011 IRM Application Midland PUC was granted recovery under the Decision and Order dated March 17, 2011 of \$210,204 in LRAM and \$5,353 in SSM for programs that impacted revenues from 2005 to 2009 for both Third Tranche and OPA CDM programs.

d) Midland PUC has not received any of the lost revenues requested in this application in the past. This application includes the following:

OPA Programs included in this LRAM Claim:

- 2010 Program Results
- 2010 Program Results persistent into 2011
- 2006-2009 program results persistent into 2010 & 2011

e) Midland PUC's last load forecast was approved for the year 2009 and was based on monthly class specific data from May 2002 to December 2007. In the supporting regression analysis, no variables were identified specific to CDM. It is Midland PUC's submission that there was insufficient historical actual data (2006-2007) to comply with the General Requirements under section 2.6.1.4 of the OEB's June 22, 2011 filing requirements. LRAM claims for 2006-2009 were calculated and approved by the Board through inclusion of specific LRAM claim in its 2011 IRM Application.

For its 2012 IRM submission, there have been no changes to Midland PUC's load forecast. Based on the above paragraph, Midland PUC submits there was no reliable predictive variable for CDM in the 2009 load forecast. On this basis, Midland PUC submits that persistence of 2006-2009 CDM Program results into 2010 should be included in final LRAM amounts.

2010 CDM program results were not included in the 2009 load forecast and therefore should be included in total LRAM calculations.

Claims for persistence of 2006 – 2010 program results into 2011 should also be included in the total calculated LRAM. Since the only results included for consideration for 2011 are persistent results from prior years, sufficient time has passed to enable an accurate LRAM calculation, consistent with OEB CDM guidelines.

f) Table 4 details the LRAM amounts requested in this application per year:

Table 4: 2006-2010 LRAM Calculations

	Years Lost Revenue took place		TOTAL
	2010	2011	
2006	\$1,521.25	\$1,475.61	\$2,996.87
2007	\$4,916.04	\$ 4,763.08	\$9,679.12
2008	\$6,931.62	\$ 6,697.78	\$13,629.40
2009	\$12,036.79	\$1,583.40	\$23,620.19
2010	\$11,223.00	\$ 8,486.43	\$19,709.42
	\$36,628.70	\$33,006.30	\$69,635.00

- g) Midland PUC did not apply for carrying charges on the LRAM amounts requested in the IRM Application.
- h) Not Applicable

5. PILS Account 1562 Disposition

Ref: Tab 5, Appendices L, M, N, O, P

Income Tax Rates used in 2001-2005 SIMPIL Models for True-up Calculations

Preamble:

Midland reported losses for tax purposes, or utilized loss carry-forwards to reduce taxable income to zero, in the 2001 to 2005 fiscal years. In the SIMPIL models for 2001 to 2005, Midland has used the maximum blended federal and Ontario income tax rates to calculate the true-up variances. This has created incorrect variances that true up to the ratepayers.

Midland stated on tab 1, page 13 that “Midland has incorporated the maximum tax rates of 40.62%, 38.62% and 36.12% into the SIMPIL models as prescribed by the Decision and Order dated June 24, 2011 referred to above.”

In its rate applications for 2002 and 2005 Midland chose the tax rates that lay between the maximum and minimum blended tax rates as indicated in the application filing instructions. Using the maximum tax rates in the SIMPIL models creates recoveries from ratepayers that are not supported by Midland’s PILs account 1562 disposition evidence.

Midland’s approved rate base in 2001 through 2005 was \$8,211,325. From Midland’s federal T2 tax returns for 2001 to 2005, the taxable capital for calculating the Large Corporation Tax (Sch. 33) and the eligibility for the small business limit and deduction was approximately \$10 million.

This means that Midland was eligible for both the federal and Ontario small business deductions from 2001 to 2005 and, therefore, should not use the maximum blended income tax rates to calculate the true-up variances.

- a) Please explain why Midland chose the maximum blended income tax rates when its tax facts were not similar to the three distributors that submitted evidence in the Combined Proceeding EB-2008-0381.
- b) Please explain where in the Board’s decision in the Combined Proceeding that the Board addressed income tax rates that would apply to distributors that were eligible for the small business deduction.

Excluding the Impact of Regulatory Assets in the PILs 1562 Calculations

In the Combined Decision, the Board approved the position of the parties that the impact of regulatory assets and liabilities should be excluded in the determination of the balances in PILs account 1562. Tax losses and corporate minimum tax are not included in the determination of regulatory PILs tax variances. Under the standalone principle discussed in the decision in the Combined Proceeding, the business limits and capital tax thresholds (or exemptions) must be allocated 100% to the regulated distributor unless otherwise approved by the Board in the 2002 decision. Midland's evidence shows that it applied the standalone principle in the determination of the PILs proxies for 2001 4th quarter, 2002 and 2005 applications which were then incorporated into base distribution rates.

Board Staff has shown in the table below the data from Midland's federal T2 returns on Sch. 1. Board Staff has removed the impact of regulatory assets and liabilities in the calculation of net income for tax purposes by reversing the entries on Sch. 1.

- c) Board Staff requests Midland to determine the appropriate blended federal and Ontario income tax rates for each year based on the adjusted regulatory net income for tax purposes shown in the table and to provide all of the calculations. Board Staff has estimated the income tax rates to be approximately 18% for 2002, 26% for 2003, 30% for 2004 and 27% for 2005.

From Schedule T2S1	2002	2003	2004	2005
Tab 5 page reference	450	528	611	693
Net income for tax purposes	-618,248	122,005	637,813	436,837
Add back:				
Regulatory assets deducted	431,653	413,430	550,432	812,359
Conversion costs	452,303			
Deduct:				
Regulatory asset recovery additions			-372,959	-530,932
Adjusted Regulatory net income	265,708	535,435	815,286	718,264

Board Staff relied on the following data in determining the estimated income tax rates stated above.

	2002	2003	2004	2005
Business Limit for Small Business Deduction				
Federal	200,000	225,000	250,000	300,000
Ontario	280,000	320,000	400,000	400,000
Midland's Taxable Capital for				
Federal Small Business Deduction (T2S33)	8,190,536	10,026,983	10,027,111	10,027,111
Threshold for Federal SBD (T2S33)	10,000,000	10,000,000	10,000,000	10,000,000
Federal Income Tax Components				

Federal tax rate	38.00%	38.00%	38.00%	38.00%
Federal tax abatement	-10.00%	-10.00%	-10.00%	-10.00%
Federal surtax	4.00%	4.00%	4.00%	4.00%
Small business deduction	-16.00%	-16.00%	-16.00%	-16.00%
Accelerated tax reduction where SBD used	-7.00%	-7.00%	-7.00%	-7.00%
Ontario Income Tax Components				
Ontario income tax rate	12.50%	12.50%	14.00%	14.00%
Ontario IDSBC rate	-6.50%	-7.00%	-8.50%	-8.50%
Ontario surtax rate	4.333%	4.667%	4.667%	4.667%

Response:

- a) The Board's Decision and Order in the Combined Proceeding EB-2008-0381 discussed the issue of the use of a tax rate under Issue #9: What are the correct tax rates to use in the true-up variance calculations? In the discussion section of the Decision on this issue Board staff submitted the following

"Board staff submitted that a relatively simple method applicable to most distributors should be implemented. Board staff submitted, as an example, that distributors could derive the income tax rate for the true-up calculations by dividing the income tax actually payable from the final tax returns by the taxable income for each tax year, although for some distributors, this will be slightly below the maximum statutory tax rates. Parties later referred to a tax rate that would be produced in this manner as the "effective tax rate".

Various parties did and did not support Board staff with their position. In particular SEC had the following position.

"SEC submitted that it has some difficulty with staff's proposed "effective tax rate" approach as it does not appear that this was part of the methodology at the time and adding this now would be inconsistent with the Board's December 18, 2009 decision. SEC argued that it is not obvious that the "effective tax rate" would be the correct rate, and it may be that the marginal tax rate (usually the legislated rate) is more appropriate. SEC's interpretation of the April 2003 FAQ is that it refers to the "legislated" tax rates, not effective tax rates and that is what the distributors should have used."

In it's reply submission Board changed their position on the tax rate to be used and stated:

"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"..."

The Board's finding in regards to this issue is as follows:

"The Board notes that the Board staff reply submission differs from its December 24, 2010 submission and appears to be generally responsive to the concerns raised by the parties in their submissions.

The Board notes that the application of the staff proposal to use the tax rates contained in the tables shown above is compatible with the manner in which the parties settled Issue # 4 with regard to tax loss carry-forwards.

The Board notes that no party raised any specific concerns with proposals on this particular issue contained in Board staff's reply submission.

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 submission."

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 suggest 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.

- b) Midland is unaware of a reference to the small business deduction in the Board's Decision. However, regardless of whether or not there is such a reference, the models used by Halton Hills, Barrie and Enwin indicate they used the maximum tax rates even when their taxable income was zero.
- c) This question appears to use a tax rate half way between the minimum and maximum tax rates. As indicated in part a) above, the Board Decision directed a maximum blended tax rate.

Notwithstanding the above, Midland PUC would provide the following information pertaining to the schedule prepared by Board Staff. In particular, Midland PUC would point out in the year 2002, Midland PUC provided two sets of financial statements and two sets of corporate tax returns in the Application filing. Midland PUC was subject to two year end requirements in 2002, one at April 30, 2002 and one at December 31, 2002. Table 5 below provides the Adjusted Regulatory Net Income details of the April 30, 2002 and December 31, 2002 year end data along with data from 2003, 2004 and 2005.

Table 5: 2002 to 2005 Adjusted Regulatory Net Income

		Apr-02	Dec-02	Total 2002	2003	2004	2005
From Schedule T2S1							
	Tab 5 Page Reference	400	450		528	611	693
	Net Income for Tax Purposes	(296,168)	(618,248)	(914,416)	122,005	637,813	436,837
	Add Back:						
	Regulatory assets deducted		431,653	431,653	413,430	550,432	812,359
	Conversion costs		452,303	452,303			
	Deduct:						
	Regulatory asset recovery additions					(372,959)	(530,932)
	Adjusted Regulatory Net Income	(296,168)	265,708	(30,460)	535,435	815,286	718,264

Based on the above Adjusted Regulatory Net Income, Midland PUC would calculate the taxes in Table 6 on the following pages

Table 6: Calculation of Income Taxes – 2002 to 2005

1 Taxation Year Ended December 31, 2002

Estimated Taxable Income (Loss) & Effective Tax Rate on (\$30,460) of Taxable Income

Notes and Assumptions:

1) Estimated taxable income (loss) for the December 31, 2002 taxation year was calculated as follows:

May 1, 2002 - December 31, 2002 Adjusted Regulatory Net Income	\$265,708
January 1, 2002 - April 30, 2002 Taxable Income	<u>(\$296,168)</u>
	<u><u>(\$30,460)</u></u>

Federal	Totals	\$0 to \$200,000	\$200,001 to \$300,000	\$300,001 UP
Federal Corporate Tax Rate		13.12%	22.12%	26.12%
Taxable Income (if negative enter 0)	-	-	-	-
Federal Corporate Taxes	-	-	-	-
Ontario		\$0 to \$280,000		
Ontario Corporate Tax Rate		6.00%		
Taxable Income (if negative enter 0)	-	-		
Ontario Corporate Taxes	-	-		
Total Federal and Ontario Corporate Taxes	-			
Effective Corporate Tax Rate	0.00%			

Tax Rates @ December 31, 2002			
Federal	\$0 to \$200,000	\$200,001 to \$300,000	\$300,001 UP
Base Rate	38.00%	38.00%	38.00%
Abatement	-10.00%	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%	0.00%
Accelerated Rate Reduction	0.00%	-7.00%	0.00%
General Rate Reduction	0.00%	0.00%	-3.00%
Surtax	1.12%	1.12%	1.12%
	13.12%	22.12%	26.12%
Ontario	\$0 to \$280,000		
Base Rate	12.50%		
Small Business Deduction	-6.50%		
Surtax	0.00%		
	6.00%		

2 **Taxation Year Ended December 31, 2003**
Estimated Taxable Income & Effective Tax Rate on \$535,435 of Taxable Income

Federal	Totals	0 to \$225,000	\$225,001 to \$300,000	\$300,001 to \$535,435
Federal Corporate Tax Rate		13.12%	22.12%	24.12%
Taxable Income	535,435	225,000	75,000	235,435
Federal Corporate Taxes	102,897	29,520	16,590	56,787
Ontario		0 to \$320,000	\$320,001 to \$535,435	
Ontario Corporate Tax Rate		5.50%	17.17%	
Taxable Income	535,435	320,000	215,435	
Ontario Corporate Taxes	54,590	17,600	36,990	
Total Federal and Ontario Corporate Taxes	157,487			
Effective Corporate Tax Rate	29.41%			

Tax Rates @ December 31, 2003			
Federal	0 to \$225,000	\$225,001 to \$300,000	\$300,001 to \$535,435
Base Rate	38.00%	38.00%	38.00%
Abatement	-10.00%	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%	0.00%
Accelerated Rate Reduction	0.00%	-7.00%	0.00%
General Rate Reduction	0.00%	0.00%	-5.00%
Surtax	1.12%	1.12%	1.12%
	13.12%	22.12%	24.12%
Ontario	0 to \$320,000	\$320,001 to \$535,435	
Base Rate	12.50%	12.50%	
Small Business Deduction	-7.00%	0.00%	
Surtax	0.00%	4.67%	
	5.50%	17.17%	

3 Taxation Year Ended December 31, 2004
Estimated Taxable Income & Effective Tax Rate on \$815,286 of Taxable Income

Federal	Totals	0 to 248,644	\$248,645 to \$815,286	
Federal Corporate Tax Rate		13.12%	22.12%	
Taxable Income	815,286	248,644	566,642	
Federal Corporate Taxes	157,963	32,622	125,341	
Ontario		0 to \$400,000	\$400,001 to \$815,286	
Ontario Corporate Tax Rate		5.50%	18.67%	
Taxable Income	815,286	400,000	415,286	
Ontario Corporate Taxes	99,534	22,000	77,534	
Total Federal and Ontario Corporate Taxes	257,497			
Effective Corporate Tax Rate	31.58%			

Tax Rates @ December 31, 2004		
Federal	0 to \$248,644	\$248,645 to \$815,286
Base Rate	38.00%	38.00%
Abatement	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%
General/Accelerated Rate Reduction	0.00%	-7.00%
Surtax	1.12%	1.12%
	13.12%	22.12%
Ontario	0 to \$400,000	\$400,001 to \$815,286
Base Rate	14.00%	14.00%
Small Business Deduction	-8.50%	0.00%
Surtax	0.00%	4.67%
	5.50%	18.67%

4 Taxation Year Ended December 31, 2005
Estimated Taxable Income & Effective Tax Rate on \$718,264 of Taxable Income

Federal	Totals	0 to \$300,000	\$300,001 to \$718,264	
Federal Corporate Tax Rate		13.12%	22.12%	
Taxable Income	718,264	300,000	418,264	
Federal Corporate Taxes	131,880	39,360	92,520	
Ontario		0 to \$400,000	\$400,001 to \$718,264	
Ontario Corporate Tax Rate		5.50%	18.67%	
Taxable Income	718,264	400,000	318,264	
Ontario Corporate Taxes	81,420	22,000	59,420	
Total Federal and Ontario Corporate Taxes	213,300			
Effective Corporate Tax Rate	29.70%			

Tax Rates @ December 31, 2005		
Federal	0 to \$300,000	\$300,001 to \$718,264
Base Rate	38.00%	38.00%
Abatement	-10.00%	-10.00%
Small Business Deduction	-16.00%	0.00%
General Rate Reduction	0.00%	-7.00%
Surtax	1.12%	1.12%
	13.12%	22.12%
Ontario	0 to \$400,000	\$400,001 to \$718,264
Base Rate	14.00%	14.00%
Small Business Deduction	-8.50%	0.00%
Surtax	0.00%	4.67%
	5.50%	18.67%

Midland PUC would also provide the information in Table 7 pertaining to the business limits for the Small Business Deduction:

Table 7: Small Business Limits

SMALL BUSINESS LIMITS

The business limit for the Small Business Deduction at December 31:

Year	Federal	Provincial
2002	200,000	280,000
2003	225,000	320,000
2004	248,644	400,000
2005	300,000	400,000

6. PILS Account 1562 Disposition

Ref: Tab 5, Appendix L – 2001 4th Quarter SIMPIL

In the 2002 rate application to calculate the 2001 4th quarter PILs proxy, Midland used a tax rate of 34.12%. Midland incurred an operating loss for tax purposes unrelated to regulatory assets in its actual 2001 4th quarter results. However, in the 2001 SIMPIL model, Midland used the maximum rate of 40.62% which creates a variance that trues up to ratepayers.

- a) Should Midland use the PILs proxy tax rate of 34.12% to calculate the true-up variances in its 2001 SIMPIL model? If not, please explain what tax rate would be more appropriate and why.

Response:

- a) Midland believes it has correctly used the maximum rate of 40.62% in accordance with the Board's Decision in EB-2008-0381. As indicated in Question 5 herein, the maximum tax rate was used by Halton Hills, Barrie and EnWin even when their taxable income was zero. Consequently, Midland has followed the Board's direction in this regard.

7. PILS Account 1562 Disposition

Ref: Tab 5, Appendix P – 2005 SIMPIL

In sheet TAXCALC Midland entered CDM amounts of \$40,000 for the proxy and an actual of \$4,000. This results in a true-up to ratepayers of \$36,000 before the tax calculations.

- a) Please explain why Midland forecast \$40,000 in the 2005 rate application but spent only \$4,000. Please provide evidence that supports the actual amount of only \$4,000.

Response:

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.

A copy of Appendix A – Evaluation of the CDM Plan included in the CDM Third Tranche Annual Report for 2005 is reproduced below in Table 8. This report outlines the expenditures per class totalling \$72,370.50.

Table 8: Appendix A- Evaluation CDM Plan – 3rd Tranche Annual Report

	Total	Residential	Commercial	Institutional	Industrial	LDC System
<i>Net TRC value (\$):</i>	\$114,164.64	\$126,328	-\$2,169	\$12,959	-\$2,169	-\$20,785
<i>Benefit to cost ratio:</i>	\$ 2.77					
<i>Number of participants or units delivered:</i>	7,055	6,300	700	55		
<i>Total kWh to be saved over the lifecycle of the plan (kWh):</i>	3,184,420.00	2,500,470	277,830	406,120		
<i>Total in year kWh saved (kWh):</i>	725,654.00	634,813	70,535	20,306		
<i>Total peak demand saved (kW):</i>	179.48	161.53	17.95	4.64		
<i>Total kWh saved as a percentage of total kWh delivered (%):</i>	0.2947%	0.2578%	0.0286%	0.0082%		
<i>Peak kW saved as a percentage of LDC peak kW load (%):</i>	0.4310%	0.3879%	0.0431%	0.0111%		
<i>Gross in year C&DM expenditures (\$):</i>	\$ 72,370.58	\$32,848.01	\$7,312.17	\$11,039.39	\$4,120.19	\$17,050.83
<i>Expenditures per kWh saved (\$/kWh)*:</i>	\$0.02	\$0.01	\$0.00	\$0.03		
<i>Expenditures per kW saved (\$/kW)**:</i>	\$403.23	\$1,247.55	\$138.62	\$2,381.75		
<i>Utility discount rate (%):</i>	8.56					

*Expenditures include all utility program costs (direct and indirect) for all programs which primarily generate energy savings.

**Expenditures include all utility program costs (direct and indirect) for all programs which primarily generate capacity savings.

8. PILS Account 1562 Disposition

Ref: Tab 5, Appendices W, X, Y, Z, AA
Amounts Billed to Customers

Unmetered Scattered Load (USL)

Unmetered scattered load is listed as a customer class in the rate schedules attached to the Board's decisions. In the Board's decisions for 2002, 2004 and 2005 the approved rates for USL were identified as being the same as GS<50kW rates which have associated PILs rate slivers.

- a) Please explain why Midland did not calculate PILs dollars recovered from the USL class in the calculations of recoveries from customers. Please correct the PILs recovery worksheets.

Fixed and Variable Charge Rate Components

From March 1, 2002 to March 31, 2004 PILs were recovered from the fixed and variable charge components for all customer classes. Starting April 1, 2004, PILs were recovered using the variable charge rate. This can be found on the 2004 application RAM sheet #7 where 100% is assigned to the variable charge rate. Midland has used the fixed and variable rates to calculate recoveries for the period April 1, 2004 to March 31, 2005.

- b) Please correct the calculations of the amounts recovered from ratepayers for the period April 1, 2004 to March 31, 2005.

Interest Expense

Interest Portion of True-up – 2001 to 2005 SIMPIL - TAXCALC

When the actual interest expense, as reflected in the financial statements and tax returns, exceeds the maximum deemed interest amount approved by the Board, the excess amount is subject to a claw-back penalty and is shown in sheet TAXCALC as an extra deduction in the true-up calculations.

For the tax years 2001 to 2005:

- c) Did Midland have interest expense related to liabilities other than debt that is disclosed as interest expense in its financial statements?
- d) Did Midland net interest income against interest expense in deriving the amount it shows as interest expense in its financial statements and tax returns? If yes, please provide details to what the interest income relates.
- e) Did Midland include interest expense on customer security deposits in interest expense for purposes of the interest true-up calculation?

- f) Did Midland include interest income on customer security deposits in the disclosed amount of interest expense in its financial statements and tax returns?
- g) Did Midland include interest expense on IESO prudentials in interest expense?
- h) Did Midland include interest carrying charges on regulatory assets or liabilities in interest expense?
- i) Did Midland include the amortization of debt issue costs, debt discounts or debt premiums in interest expense? If the answer is yes, did Midland also include the difference between the accounting and tax amortization amounts in the interest true-up calculations? Please explain.
- j) Did Midland deduct capitalized interest in deriving the interest expense disclosed in its financial statements? If the answer is yes, did Midland add back the capitalized interest to the actual interest expense amount for purposes of the interest true-up calculations? Please explain.
- k) Please provide Midland views on which types of interest income and interest expense should be included in the excess interest true-up calculations.
- l) Please provide a table for the years 2001 to 2005 that shows all of the components of Midland's interest expense and the amount associated with each type of interest.

Tax Years – Statute-barred

- m) Please confirm that all tax years from 2001 to 2005 are now statute-barred.

Response:

- a) Midland PUC's USL customers were included in GS<50kW customer class and were not separately identified. PILs dollars recovered from the USL class were calculated in the GS<50kW customer class.
- b) Midland PUC has redone the calculations based on a variable charge only and is attaching a revised schedule "PILS, 2001, 2002, 2003 & 2004, 2005, 2006 Variance Acct OEB Application IRs Jan 13, 2012".

- c) Table 9 provides Midland PUC's interest expense as related to the financial statements. Included in interest expense are bank charges related to Midland PUC's overdraft line of credit and monthly bank charges as applicable in the years 2003 and 2004 and 2005. Midland PUC has separated the long term debt interest expense per year as shown under Account #6005.

Table 9: Interest Expense Per Financial Statements

Account #	Account Description	2001 Year	2002 Year 30-Apr	2002 Year 31-Dec	2003 Year	2004 Year	2005 Year
6005	Interest on Long term debt	\$ 65,722.00	\$56,668.82	\$ 109,783.49	\$ 101,668.67	\$ 96,879.00	\$ 62,046.51
6035-8105	Other Interest - TD Credit Line				\$ 9,240.98	\$ 8,184.42	\$ 8,990.05
6035-8200	Other Interest Exp- Bank charges				\$ 12,715.05	\$ 8,350.64	
	Interest per financial statements	\$ 65,722.00	\$56,669.00	\$ 109,783.00	\$ 123,624.70	\$ 113,414.00	\$ 71,037.00
6035-8300	Other Int Exp - Variance Accounts			\$ (14,976.47)	\$ (33,540.06)	\$(165,061.10)	\$ (81,593.99)
6035-8400	Other Int Exp - RSVA Asset Rec'd					\$ 7,776.33	\$ 44,656.60

- d) Interest expense was netted with bank charges on the financial statements. Variance account interest revenues are netted with variance account interest expenses. See Table 9 above.
- e) No, Midland PUC did not include interest expense on customer deposits for the purposes of the interest true-up calculations.
- f) Midland PUC did not include interest income in interest expense calculations.
- g) Midland PUC did include interest expense on IESO prudentials in the interest calculations as noted in Table 9 above.
- h) Midland PUC did not include interest carrying charges on regulatory assets or liabilities in interest expense.
- i) Midland PUC did not incur amortization of debt issue costs, debt discounts or debt premiums in interest expense. Consequently, this does not apply to Midland PUC.
- j) Midland PUC did not incur capitalized interest in deriving the interest expense disclosed in the financial statements. Consequently, this does not apply to Midland PUC.

- k) Midland PUC believes actual interest expense on long term debt should be taken into account in the excess true-up calculations. Midland PUC does not believe variance account interest related to regulatory assets or line of credit costs should be included in the excess true-up calculations.
- l) See response to c) above.
- m) Midland PUC confirms all tax years from 2001 to 2005 are now statute-barred.

SCHEDULE “A”

2009 TAXABLE CAPITAL

**Sch 33 T-1
Sch 515 CT23**



TAXABLE CAPITAL EMPLOYED IN CANADA – LARGE CORPORATIONS

Name of corporation	Business Number	Tax year-end Year Month Day
Midland Power Utility Corporation	86574 9386 RC0001	2009-12-31

- Use this schedule in determining if the total taxable capital employed in Canada of the corporation (other than a financial institution or an insurance corporation) and its related corporations is greater than \$10,000,000.
- Parts, sections, subsections, and paragraphs referred to on this schedule are from the federal *Income Tax Act* and the *Income Tax Regulations*.
- Subsection 181(1) defines the terms "financial institution," "long-term debt," and "reserves."
- Subsection 181(3) provides the basis to determine the carrying value of a corporation's assets or any other amount under Part I.3 for its capital, investment allowance, taxable capital, or taxable capital employed in Canada, or for a partnership in which it has an interest.
- If you are filing a provincial capital tax return with your *T2 Corporation Income Tax Return*, also file a completed Schedule 33 with the return no later than six months from the end of the tax year.
- This schedule may contain changes that had not yet become law at the time of publishing.

If the corporation was a non-resident of Canada throughout the year and carried on a business through a permanent establishment in Canada, go to Part 4, "Taxable capital employed in Canada."

Part 1 – Capital

Add the following amounts at the end of the year:

Reserves that have not been deducted in computing income for the year under Part I	101	78,065	
Capital stock (or members' contributions if incorporated without share capital)	103	6,880,984	
Retained earnings	104	1,890,205	
Contributed surplus	105		
Any other surpluses	106		
Deferred unrealized foreign exchange gains	107		
All loans and advances to the corporation	108	1,994,381	
All indebtedness of the corporation represented by bonds, debentures, notes, mortgages, hypothecary claims, bankers' acceptances, or similar obligations	109	960,000	
Any dividends declared but not paid by the corporation before the end of the year	110		
All other indebtedness of the corporation (other than any indebtedness for a lease) that has been outstanding for more than 365 days before the end of the year	111		
Proportion of the amount, if any, by which the total of all amounts (see note below) for the partnership of which the corporation is a member at the end of the year exceeds the amount of the partnership's deferred unrealized foreign exchange losses	112		
Subtotal		11,803,635	11,803,635 A

Deduct the following amounts:

Deferred tax debit balance at the end of the year	121	441,741	
Any deficit deducted in computing its shareholders' equity (including, for this purpose, the amount of any provision for the redemption of preferred shares) at the end of the year	122		
Any amount deducted under subsection 135(1) in computing income under Part I for the year, as long as the amount may reasonably be regarded as being included in any of lines 101 to 112 above	123		
The amount of deferred unrealized foreign exchange losses at the end of the year	124		
Subtotal		441,741	441,741 B
Capital for the year (amount A minus amount B) (if negative, enter "0")	190		11,361,894

Note: Lines 101, 107, 108, 109, 111, and 112 are determined as follows:

- If the partnership is a member of another partnership (tiered partnerships), include the amounts of the partnership and tiered partnerships.
- Amounts for the partnership and tiered partnerships are those that would be determined for lines 101, 107, 108, 109, 111, and 112 as if they apply in the same way that they apply to corporations.
- Do not include amounts owing to the member or to other corporations that are members of the partnership.
- Amounts are determined at the end of the last fiscal period of the partnership ending in the year of the corporation.
- The proportion of the total amounts is determined by the corporation's share of the partnership's income or loss for the fiscal period of the partnership.

Part 2 – Investment allowance**Add** the carrying value at the end of the year of the following assets of the corporation:

A share of another corporation	401	100
A loan or advance to another corporation (other than a financial institution)	402	
A bond, debenture, note, mortgage, hypothecary claim, or similar obligation of another corporation (other than a financial institution)	403	
Long-term debt of a financial institution	404	
A dividend receivable on a share of the capital stock of another corporation	405	
A loan or advance to, or a bond, debenture, note, mortgage, hypothecary claim, or similar obligation of, a partnership all of the members of which, throughout the year, were other corporations (other than financial institutions) that were not exempt from tax under Part I.3 [other than by reason of paragraph 181.1(3)(d)]	406	
An interest in a partnership (see note 1 below)	407	
Investment allowance for the year (add lines 401 to 407)	490	100

Notes:

- Where the corporation has an interest in a partnership or in tiered partnerships, consider the following:
 - the investment allowance of a partnership is deemed to be the amount calculated at line 490 above, at the end of its fiscal period, as if it was a corporation;
 - the total of the carrying value of each asset of the partnership described in the above lines is for its last fiscal period ending at or before the end of the corporation's tax year; and
 - the carrying value of a partnership member's interest at the end of the year is its specified proportion [as defined in subsection 248(1)] of the partnership's investment allowance.
- Lines 401 to 405 should not include the carrying value of a share of the capital stock of, a dividend payable by, or indebtedness of a corporation that is exempt from tax under Part I.3 [other than by reason of paragraph 181.1(3)(d)].
- Where a trust is used as a conduit for loaning money from a corporation to another related corporation (other than a financial institution), the loan will be considered to have been made directly from the lending corporation to the borrowing corporation, according to subsection 181.2(6).

Part 3 – Taxable capital

Capital for the year (line 190)	11,361,894	C
Deduct: Investment allowance for the year (line 490)	100	D
Taxable capital for the year (amount C minus amount D) (if negative, enter "0")	500	11,361,794

Part 4 – Taxable capital employed in Canada**To be completed by a corporation that was resident in Canada at any time in the year**

Taxable capital for the year (line 500)	11,361,794	x	Taxable income earned in Canada	610	436,986	=	Taxable capital employed in Canada	690	11,361,794
			Taxable income		436,986				

- Notes:**
- Regulation 8601 gives details on calculating the amount of taxable income earned in Canada.
 - Where a corporation's taxable income for a tax year is "0," it shall, for the purposes of the above calculation, be deemed to have a taxable income for that year of \$1,000.
 - In the case of an airline corporation, Regulation 8601 should be considered when completing the above calculation.

To be completed by a corporation that was a non-resident of Canada throughout the year and carried on a business through a permanent establishment in Canada

Total of all amounts each of which is the carrying value at the end of the year of an asset of the corporation used in the year or held in the year, in the course of carrying on any business during the year through a permanent establishment in Canada	701
--	-----

Deduct the following amounts:

Corporation's indebtedness at the end of the year [other than indebtedness described in any of paragraphs 181.2(3)(c) to (f)] that may reasonably be regarded as relating to a business it carried on during the year through a permanent establishment in Canada

711

Total of all amounts each of which is the carrying value at the end of year of an asset described in subsection 181.2(4) of the corporation that it used in the year, or held in the year, in the course of carrying on any business during the year through a permanent establishment in Canada

712

Total of all amounts each of which is the carrying value at the end of year of an asset of the corporation that is a ship or aircraft the corporation operated in international traffic, or personal or movable property used or held by the corporation in carrying on any business during the year through a permanent establishment in Canada (see note below)

713

Total deductions (add lines 711, 712, and 713) E

Taxable capital employed in Canada (line 701 minus amount E) (if negative, enter "0")	790
--	-----

Note: Complete line 713 only if the country in which the corporation is resident did not impose a capital tax for the year on similar assets, or a tax for the year on the income from the operation of a ship or aircraft in international traffic, of any corporation resident in Canada during the year.

Part 5 – Calculation for purposes of the small business deduction

This part is applicable to corporations that are not associated in the current year, but were associated in the prior year.

Taxable capital employed in Canada (line 690 or 790, whichever applies) F

Deduct: G

Excess (amount F **minus** amount G) (if negative, enter "0") H

Calculation for purposes of the small business deduction (amount H x 0.00225) I

Enter this amount at line 415 of the T2 return



ONTARIO CAPITAL TAX ON OTHER THAN FINANCIAL INSTITUTIONS

Name of corporation	Business Number	Tax year-end Year Month Day
Midland Power Utility Corporation	86574 9386 RC0001	2009-12-31

- Complete this schedule for a corporation with a permanent establishment in Ontario at any time in the tax year and that is a corporation other than a financial institution. The Ontario capital tax on other than financial institutions is levied under section 64 of the *Taxation Act, 2007* (Ontario).
- The Ontario capital tax is eliminated effective July 1, 2010. You do not have to complete this schedule if the corporation's tax year begins after June 30, 2010. For businesses mainly engaged in qualifying manufacturing and resource activities in Ontario, the capital tax is eliminated effective January 1, 2007.
- To complete this schedule, you have to complete Schedule 33, *Part I.3 Tax on Large Corporations* (renamed *Taxable Capital Employed in Canada – Large Corporations* for 2010 and later tax years). File completed copies of both schedules with the *T2 Corporation Income Tax Return* within six months of the end of the tax year.
- A corporation is exempt from Ontario capital tax if it was one of the following:
 - 1) a corporation that is liable to the special additional tax according to section 74 of the *Corporations Tax Act* (Ontario);
 - 2) a credit union;
 - 3) a deposit insurance corporation according to section 137.1 of the federal *Income Tax Act*;
 - 4) a family farm corporation for the year as defined by subsection 64(3) of the *Taxation Act, 2007* (Ontario), other than a corporation for which a determination has been made under subsection 31(2) of the federal Act;
 - 5) a family fishing corporation, as defined by subsection 64(3) of the *Taxation Act, 2007* (Ontario); or
 - 6) a corporation exempt from income tax according to section 149 of the federal Act.

Part 1 – Taxable capital of a corporation resident in Canada other than a financial institution

Amount A from Part 1 of Schedule 33	100	11,803,635	
Add:			
Accumulated other comprehensive income at the end of the year	105		
		Subtotal	11,803,635
			11,803,635 A
Deduct:			
Amount B from Part 1 of Schedule 33	110	441,741	
Amount on line 490 from Part 2 of Schedule 33	115	100	
		Subtotal	441,841
			441,841 B
Taxable capital (amount A minus amount B) (if negative, enter "0")	120	11,361,794	

Part 2 – Capital deduction

Complete this part only if the corporation is associated.

Are you electing under subsection 83(2) of the *Taxation Act, 2007* (Ontario)? 190 1 Yes ☐ 2 No ☐If you answered **no** to the question at line 190, complete line 220. If you answered **yes** to the question at line 190, complete line 305 by using Schedule 516, *Capital Deduction Election of Associated Group for the Allocation of Net Deduction*, to calculate the amount to be entered on line 300.

Taxable capital (from line 120) or taxable capital employed in Canada of a corporation that was a non-resident of Canada (from line 790 in Part 4 of Schedule 33)

200

x

15,000,000 \$ =

Capital deduction 220

Taxable capital or taxable capital employed in Canada of every corporation with a permanent establishment in Canada and associated for the last tax year *

210

* This amount includes the filing corporation's taxable capital or taxable capital employed in Canada. Do not include an amount from a financial institution or corporation that is exempt from capital tax under Division E of the *Taxation Act, 2007* (Ontario) or Part III of the *Corporations Tax Act* (Ontario).

Allocation of net deduction (from line 600 for the filing corporation from Schedule 516)

300

=

Capital deduction 305

Ontario allocation factor (OAF)
(amount I in Part 3)

Part 3 – Ontario capital tax payable

Taxable capital (enter amount from line 120 in Part 1) or taxable capital employed in Canada of a corporation that was a non-resident of Canada (enter amount from line 790 in Part 4 of Schedule 33), whichever applies **320** 11,361,794

Deduct:
Capital deduction (Enter \$15,000,000 if the corporation is not associated. Otherwise, enter the amount from line 220 or line 305, whichever applies, from Part 2) 15,000,000 B

Net amount (line 320 **minus** amount B) (if negative, enter "0") C

Note: For days in the tax year after June 30, 2010, the Ontario capital tax rate is 0%.

Amount C	x	Number of days in the tax year before January 1, 2010	365	x	0.00225	=	D
		Number of days in the tax year	365				
Amount C	x	Number of days in the tax year after December 31, 2009 and before July 1, 2010		x	0.00150	=	E
		Number of days in the tax year	365				
Subtotal (amount D plus amount E)							F
Amount F	x	OAF (amount on line I)	1.00000	=			G
Amount G	x	Number of days in the tax year *	365	=			H
			365				

Deduct:
Capital tax credit for manufacturers (enter amount J from Part 4) **350**

Ontario capital tax payable (amount H **minus** line 350) (if negative, enter "0") **400**

Enter amount from line 400 on line 282 of Schedule 5, *Tax Calculation Supplementary - Corporations*.

* Enter either 365 if there are at least 51 weeks in the tax year, or the number of days in the year, whichever applies.

Calculation of the Ontario allocation factor (OAF)

If the provincial or territorial jurisdiction entered on line 750 of the T2 return is "Ontario," enter "1" on line I.

If the provincial or territorial jurisdiction entered on line 750 of the T2 return is "multiple," complete the following calculation and enter the result on line I:

Ontario taxable income **	=	
Taxable income ***		

Ontario allocation factor 1.00000 I

** Enter the amount allocated to Ontario from column F in Part 1 of Schedule 5. If the taxable income is nil, calculate the amount in column F as if the taxable income were \$1,000.

*** Enter the taxable income amount from line 360 or line Z of the T2 return, whichever applies. If the taxable income is nil, enter "1,000."

Part 4 – Capital tax credit for manufacturers

Ontario manufacturing labour cost*	405	x	100	=	420	%
Total Ontario labour cost**	410					

If the percentage on line 420 is 20% or less, enter "0" on line J.

If the percentage on line 420 is at least 50%, enter amount H from Part 3 on line J.

If the percentage on line 420 is more than 20% but less than 50%, complete the following calculation and enter the result on line J:

(percentage from line 420) – 20%	%	x	Amount H from Part 3 =
30%	30	%	

Capital tax credit for manufacturers J

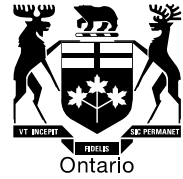
Enter amount J on line 350 in Part 3.

* As defined in subsection 83.1(4) of the *Taxation Act, 2007* (Ontario)

** As defined in subsection 83.1(5) of the *Taxation Act, 2007* (Ontario)

**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 ENERGY BOARD

STAFF SUBMISSION

2012 ELECTRICITY DISTRIBUTION RATES

Midland Power Utility Corporation

EB-2010-0182

February 10, 2012

**Board Staff Submission
Midland Power Utility Corporation
2012 IRM Rate Application
EB-2011-0182**

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 time¹.

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)

2010 programs

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, SIMPIL² 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 \$1,406,482⁴ 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 enter (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.



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 your require any further information.

Yours very truly,

MIDLAND POWER UTILITY CORPORATION

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

Phil Marley, CMA
President & CEO
Tel: (705)526-9362 ext 204
Fax: (705) 526-7890
E-mail: pmarley@midlandpuc.on.ca



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.

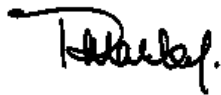
17
18 Midland PUC disagrees with VECC's submission (pg. 6, Item 2.22). Midland PUC
19 submits and reconfirms the most recent OPA 2006-2010 Final CDM Results Report -
20 Midland Power Utility Corporation were used for all LRAM calculations. No 2011
21 program results have been included in these calculations.

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



Phil Marley, CMA
President & CEO
pmarley@midlandpuc.on.ca
(705)526-9362 ext 204