



EB-2012-0219

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.

AND IN THE MATTER OF a Motion to Review and Vary by Midland Power Utility Corporation pursuant to the Ontario Energy Board's *Rules of Practice and Procedure* for a review of the Board's Decision and Order in proceeding EB-2011-0182.

**NOTICE OF MOTION TO VARY
AND PROCEDURAL ORDER No. 1
May 8, 2012**

On April 24, 2012, Midland Power Utility Corporation ("Midland") filed with the Ontario Energy Board (the "Board") a Notice of Motion to Review and Vary (the "Motion") the Board's Decision and Order dated April 4, 2012 in respect of Midland's 2012 rate application (EB-2011-0182). The Board has assigned the Motion file number EB-2012-0219.

The Motion seeks to vary the portion of the Board's EB-2011-0182 Decision and Order in relation to the Review and Disposition of Account 1562 - Deferred Payments in Lieu of Taxes ("Account 1562"). Midland submitted that the grounds for the Motion are that:

- The Board erred in its adoption of the minimum rates for Midland;
- The Board erred in fact, in finding that there was no evidentiary basis for the

alternative tax rates shown in Midland's reply submission; and

- The Board's Decision is inconsistent with its decisions in respect of other distributors in similar circumstances.

Midland also requested:

- 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
- A declaration that its current rates and charges (i.e. 2012 rates) be made interim pending the disposition of this Motion.

The Board will not hear that part of the Motion seeking a change to the disposition period for Midland's Deferral and Variance Account balances. The Board has determined that this aspect of the Motion does not meet the threshold test as contemplated in the Board's *Rules of Practice and Procedure*.

Midland originally requested a one year disposition period and subsequently requested a five year disposition period in the event the Board adopted the minimum tax rates for purposes of determining the Account 1562 balance. The Board considered Midland's submission and determined that a one-year disposition would be appropriate. The Board stated:

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."

Having been denied a five-year disposition period, Midland now seeks a two-year disposition period. The grounds raised echo the arguments already put forward in Midland's reply argument. Those submissions were rejected by the Board, and the decision sets out the reasons for that rejection. The Board concludes, therefore, that this portion of the Motion is essentially an attempt to re-argue the issue. There is no error; nor are there no new facts or circumstances that could not have been known at the time of the proceeding. With respect to regulatory consistency, the Board does not view the difference between a one year and a two year disposition period to be a difference of sufficient importance to raise a question related to regulatory consistency.

The Board is also of the view that this difference in disposition period does not represent a question of principle which would engage a consideration of regulatory consistency in the first instance. The Board concludes that this portion of the Motion does not meet the threshold test.

With respect to the balance of the Motion, given its narrow scope, the Board has determined that the most expeditious way of dealing with this Motion is to consider concurrently the threshold question of whether the matter should be reviewed (as contemplated in the Board's *Rules of Practice and Procedure*) and the merits of the Motion. The Board will proceed by way of a written hearing. The Board will not grant Midland permission to file new evidence regarding tax rates as identified in paragraph 15 of the Motion. This is material which could have been filed during the proceeding. It is not appropriate to file a motion to review in order to re-argue an issue and place new evidence before the Board when that evidence could have been placed on the record of the original proceeding.

In a January 5, 2012 letter granting intervention status to the Vulnerable Energy Consumers Coalition ("VECC") with regards to the IRM application, the Board stated that it would not consider cost awards with respect to the disposition of Account 1562 Deferred PILs in EB-2011-0182 because the application appeared to have no inconsistencies with the Board's findings in the Account 1562 Deferred PILs Combined Proceeding. This Motion relates to the disposition of Account 1562, but the Board has determined that given the nature of the Motion it is appropriate to grant VECC cost eligibility at this time for purposes of participating in the Motion.

By letter dated May 8, 2012, Midland requested that the Board set a deadline of May 31, 2012, for the filing of additional materials in the Motion. The Board is not prepared to grant such a lengthy extension. It is important for Motions to be dealt with in an expeditious manner. The Board will grant an extension to May 18, 2012, which is 10 days beyond the date requested in the original Motion.

Midland also requested that its rates be made interim, pending a decision on the Motion. The Board notes that Midland's rates were declared interim on May 1, 2012 in EB-2011-0434.

THE BOARD THEREFORE ORDERS THAT:

1. Midland shall file with the Board any additional material in support of its Motion by no later than May 18, 2012.
2. Board staff and VECC may file written submissions with the Board and deliver it to Midland no later than May 25, 2012.
3. Midland may file a written reply submission with the Board no later than May 29, 2012.

All filings to the Board must quote file number **EB-2012-0219**, 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 shall 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 documents 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 7 paper copies. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

ADDRESS

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

E-mail: Boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto, May 8, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary