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May 18, 2012

**Delivered by Email and Courier**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
26th Floor, Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Midland Power Utility Corporation  
2012 Electricity Distribution Rate Application – Motion for Review  
Board File No. EB-2012-0219**

We are counsel to Midland Power Utility Corporation ("Midland"), the Applicant in the above captioned matter.

Pursuant to Procedural Order No. 1 ("PO#1") in this proceeding, please find accompanying this letter Midland Power's additional material in respect of this review motion. The material consists of the affidavits of James (Jim) Hopeson and Lorenzo Agostino, C.A., and copies of the Board's 2012 IRM Decisions in the applications of Hydro Hawkesbury Inc. and Renfrew Hydro Inc., both of which are referred to in Mr. Hopeson's affidavit. Paper copies of the executed affidavits will be delivered by courier.

At page 3 of PO#1, the Board advised that "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."

Midland Power will address any Board Staff and intervenor submissions in this regard in its reply submission. Midland Power notes, however, that at paragraphs 11 and 12 of its April 24, 2012 Motion, it has identified what it respectfully submits are errors in the Board's April 4, 2012 Decision. These include errors in fact (for example, in finding that there was no evidentiary basis for the alternative tax rates shown in Midland's reply submission when, 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). They also include errors in the application of minimum tax rates to Midland in the absence of an evidentiary basis for doing so and in a manner inconsistent with both the Board's approach in the Combined PILs proceeding and with the Board's decisions in other Account 1562-related applications filed by distributors in similar circumstances to those of Welland. Midland respectfully submits that this matter should be reviewed.

Also at page 3 of PO#1, the Board stated that “The Board will not grant Midland permission to file new evidence regarding tax rates as identified in paragraph 15 of the Motion.” Midland acknowledges this finding, and has taken it into consideration in preparing its additional motion material. However, Midland notes that item (b) of its request for relief in its Notice of Motion stated:

“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”

At paragraph 15 of its Notice of Motion, Midland stated, in part:

“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.”

If the Board accepts Midland’s submissions on the inappropriateness of minimum tax rates in Midland’s circumstances, then the tax rates on which the Account 1562 true-up is based will change. The rates provided in Midland’s response to Board staff Interrogatory #5(c) are closer to the appropriate rates for Midland, and it is open to the Board to adopt them, but Midland’s understanding is that they are still not accurate. Midland acknowledges that the Board does not wish to hear evidence on updated calculations of the tax rates at this time, but Midland respectfully suggests that it is important to ensure that the rates used in the final calculation of the amount for disposition are as accurate as possible. Midland maintains that the approach set out in the extract from paragraph 15, above, is an appropriate approach to any updated calculations of tax rates, in that it allows for the most accurate calculation of rates to be used, and those calculations will be subject to review by Board staff, VECC and the Board itself. Midland remains prepared to address those calculations at a time to be determined by the Board.

Should you have any questions in this regard, please do not hesitate to contact me.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Per:

*Original signed by James C. Sidlofsky*

James C. Sidlofsky

copy to: Ms. Phil Marley, President and CEO, Midland Power Utility Corporation  
Michael Buonaguro, Counsel to VECC  
Suresh Advani, Board Staff

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