

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** an application by Newmarket-Tay Power Distribution Ltd. for leave to purchase all of the issued and outstanding shares of Midland Power Utility Corporation under section 86(2)(b) of the *Ontario Energy Board Act, 1998* S.O. 1998, c. 15, (Schedule B) (the “**OEB Act**”);

**AND IN THE MATTER OF** an application by Newmarket-Tay Power Distribution Ltd. for leave to amalgamate with Midland Power Utility Corporation under section 86(1)(c) of the OEB Act;

**AND IN THE MATTER OF** an application by Midland Power Utility Corporation for leave to transfer its distribution system to Newmarket-Tay Power Distribution Ltd. under section 86(1)(a) of the OEB Act;

**AND IN THE MATTER OF** an application by Midland Power Utility Corporation for approval to transfer its rate order to Newmarket-Tay Power Distribution Ltd. under section 18(1) of the OEB Act;

**AND IN THE MATTER OF** an application by Midland Power Utility Corporation to cancel its distribution licence pursuant to section 77(5) of the OEB Act; and

**AND IN THE MATTER OF** an application by Newmarket-Tay Power Distribution Ltd. for an order to amend Newmarket-Tay Power Distribution Ltd.’s licence pursuant to section 74 of the OEB Act.

---

**REPLY SUBMISSIONS  
MIDLAND POWER UTILITY CORPORATION**

---

March 21<sup>st</sup>, 2018

**BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors  
Bay Adelaide Centre, East Tower  
22 Adelaide St W.  
Toronto, Ontario M5H 4E3

**J. Mark Rodger**

Tel: (416) 367-6190  
Fax: (416) 361-7088  
mrodger@blg.com

Counsel to the Applicant  
Midland Power Utility Corporation

**REPLY SUBMISSION  
MIDLAND POWER UTILITY CORPORATION**

**DELIVERED MARCH 21<sup>ST</sup>, 2018**

**1. INTRODUCTION**

On July 14, 2017, Newmarket-Tay Power Distribution Ltd. (“NT Power”) and Midland Power Utility Corporation (“MPUC” and together with NT Power, the “Parties”) filed with the Ontario Energy Board (the “OEB” or “Board”) an application under Section 86(2)(b) of the *Ontario Energy Board Act, 1998* S.O. 1998, c.15, Sched. B requesting various approvals to facilitate the acquisition of MPUC by NT Power (the “Application”) (together, the “Combined Utility”).

**2. REPLY ARGUMENT**

MPUC has had the opportunity to review the reply argument of NT Power filed with the Board on March 21, 2018, and MPUC adopts the NT Power submissions in full.

In addition, MPUC would like to make the following comments in response to certain Board Staff submissions.

Beyond the fundamental misunderstanding of the proposed transaction cost savings made by Board Staff in its submissions filed on March 14, 2018, as noted by NT Power in its reply argument,<sup>1</sup> it appears to MPUC that Board Staff have also misconstrued the essential standard against which LDC consolidation applications are adjudicated by the Board.

For example, with respect to the NT Power’s earnings sharing plan, Board Staff submits that the proposal is evidence of “*the less than ideal analysis and planning conducted for how NT Power, as consolidated entity, [sic] would achieve savings over the deferral period.*”<sup>2</sup>

Further, regarding the impact on financial viability, Board Staff critiques the NT Power proposal on the basis of a hypothetical circumstance in which future financial institutions deem the Combined Utility to be over-leveraged. Simultaneously, Board Staff acknowledges that there are no immediate concerns regarding NT Power’s capacity to undertake the acquisition of MPUC, nor any evidence that the hypothetical would apply.<sup>3</sup>

MPUC submits that Board Staff’s inclusion of hypothetical situations and the standard of “the ideal” in assessing MAAD applications are neither helpful nor consistent with the Board’s

---

<sup>1</sup> NT Power Reply Argument, dated March 21, 2018 at paragraph 12, citing OEB Staff Submission, dated March 14, 2018 at pg. 6 [Staff Submissions].

<sup>2</sup> Staff Submissions at p. 13.

<sup>3</sup> Staff Submissions at p. 19.

Handbook to Electricity Distributor and Transmitter Consolidation,<sup>4</sup> or with past Board decisions.

In considering whether a MAAD applicant has discharged the Board's "no harm" test, the specific evaluation principle is reasonable expectation. Specifically, the Handbook states:

*To demonstrate 'no harm', applicants must show that there is a reasonable expectation based on underlying cost structures that the costs to serve acquired customers following a consolidation will be no higher than they otherwise would have been.*<sup>5</sup>

Accordingly, and with all due respect, Board Staff submissions do not assist the Board by advancing criteria grounded in speculation and abstraction which are irrelevant to the well-established and well-understood standard already established by the Board for the adjudication of MAAD applications.

MPUC submits that NT Power and MPUC have clearly discharged the onus upon them as Applicants and demonstrated that the "no harm" test has been satisfied. MPUC submits that the relief sought should be granted.

All of which is respectfully submitted this 21<sup>st</sup> day of March, 2018.



---

J. Mark Rodger  
Counsel to the Applicant  
Midland Power Utility Corporation

<sup>4</sup> Dated January 19, 2016, [Handbook].

<sup>5</sup> Handbook at p. 7; see also Board Decision and Order, Entregus Powerlines Inc. St. Thomas Energy Inc. dated March 15, 2018 EB-2017-0212 at p.8..