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November 30, 2015

*via RESS e-filing – signed original to follow by courier*

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
PO Box 2319  
2300 Yonge Street, 27th floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Notice of Proposal to Amend Various OEB Regulatory Instruments with respect to Specifying a Mandatory Record Retention Period for Regulated Entities – Toronto Hydro-Electric System Limited’s Comments  
OEB File No. EB-2015-0247**

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On November 11, 2015 the Ontario Energy Board (OEB) released a Notice proposing to amend a number of regulatory instruments that apply to regulated entities under the OEB’s purview. The purpose of the proposed amendments is to formalize a requirement for a retention period covering nine years plus current year applicable to all records specifically mandated by the instruments in question, along with others that the OEB expects the utilities to retain by way of “reasonable inference”.<sup>1</sup> Toronto Hydro-Electric System Limited (“Toronto Hydro” or “the utility”) is pleased to provide its responses to the specific questions posed by the OEB, along with comments of general nature.

**GENERAL COMMENTS**

Toronto Hydro submits that the OEB may wish to consider a record retention framework that provides for multiple retention periods depending on the particular record type. As the framework stands, the

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<sup>1</sup> Ontario Energy Board, November 11, 2015 Notice of Proposal

framework contemplates a single retention period standard for records of all types, including those that previously had a considerably shorter two-year timeframe prescribed by the relevant regulatory instruments.

Toronto Hydro submits that the appropriate record retention period for records of a particular type should be established with regard for the role and benefit of those records to reporting and record-keeping objectives, as well as the incremental cost of retaining those records. Different records provide different insights to the OEB and its staff in terms of frequency upon which they are relied, the type of information they contain, etc. Further, there are costs of organizing and storing more records for longer periods time, opportunity costs of regulated entities' staff time dedicated to record retention or retrieval, and the costs associated with the risk the utilities may assume in determining which records are worth retaining and which are not (where this is not explicitly prescribed).

Toronto Hydro also submits that a framework which provides for multiple retention periods is consistent with the principles of the Renewed Regulated Framework for Electricity ("RRFE"), in which the OEB determined that distributors that demonstrate sound regulatory performance require less stringent regulatory oversight. Regarding record retention, Toronto Hydro follows stringent policies and processes associated with record retention and destruction, as it must as a reporting issuer subject to regulation by the Ontario Securities Commission, in addition to achieving its regulatory obligations to the OEB. Toronto Hydro has demonstrated the sufficiency of its record retention through a number of regulatory proceedings. It has demonstrated that there is a lesser need for the OEB to prescribe record retention rules.

Toronto Hydro looks forward to working with the OEB and other interested parties in developing nuanced record retention periods as the framework evolves.

## **RESPONSES TO SPECIFIC QUESTIONS**

### **Format of Retained Records**

Toronto Hydro respectfully submits that the format of retained records, whether electronic or paper, should be at the discretion of individual utilities. This choice may vary between different utilities and depend largely on the operating characteristics of each utility (e.g., existing systems and controls) and the type of records involved. It is equally likely that a regulated entity may find a particular combination of paper and electronic records to be advantageous from the efficiency perspective. To maximize administrative efficiency, and avoid the need for various entities to revise their record retention practices or upgrade the associated systems that are otherwise operating effectively (and experience the corresponding costs of doing so), Toronto Hydro submits that a specific record format should not be prescribed.

At the same time, regulated utilities have benefited from guidance from the OEB through Guidelines that set out non-exhaustive lists of examples of compliant means of achieving the regulatory end. Such a guideline, either enhancing or supplementing the current RRR filing guideline, would be improve regulatory consistency while preserving regulatory flexibility.

### **Types of Records to Which Retention Requirements Apply**

In describing the proposed amendments, the OEB notes that it expects them to “not [be] concerned with any records that are not required for regulatory purposes, e.g., records that a Regulated Entity retains solely for corporate operational purposes, but which are not required for regulatory purposes”.<sup>2</sup> Toronto Hydro agrees with this approach, and believes that any extension of record retention policies to corporate records would not be necessary to meet the substance of the OEB’s mandate and the ensuing policies.

Toronto Hydro’s preliminary assessment is that even with this carve-out, hundreds of incremental records could be encompassed by the proposed amendments. Compounded over a ten-year retention period, it is possible that these amendments could give rise to one of the largest single increases in OEB requirements in recent years, second only to the Distribution System Plans. Based on the streamlined process to bring about these amendments, it is not clear to Toronto Hydro that the OEB intended or is aware of this possible outcome.

### **Records Demonstrating Compliance with Regulatory Instruments**

Toronto Hydro takes no position on this issue.

### **Prospective vs. Retrospective Application**

Toronto Hydro respectfully submits that the new standards should only apply proactively. This is in part because retrospective application of new legal standards is at odds with the fundamental tenets of administrative law. Moreover, retrospective application is suboptimal for practical reasons. The administrative burden and costs related to investigating existing records and applying new retention requirements is considerable, as are the practical limitations of systems and processes that would need to apply new standards to old materials.

A prospective application would allow utilities to apply the new requirements to its operations in a uniform manner and not have to make expensive and time consuming changes to systems and policies as they apply to existing records.

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<sup>2</sup> Ontario Energy Board, November 11, 2015 Notice of Proposal, page 5

### **Exceptions and Other Statutory Requirements**

Where there are other legislative requirements that apply to the retention of documents, Toronto Hydro submits that the legislation of closest relationship to the type of record should apply. For example, there may be jurisdictional conflicts where federal legislation would have priority over provincial legislation and regulation, especially where the substance of a matter is under the purview of the federal legislation. In these cases, the natural priority of regulatory obligations should prevail.

It is a well-accepted principle in record retention policies and practices that rules be established not only for retention but also destruction. In that way, consideration is given to the temporal nature of information. Over time, the subjects about which records pertain change as do the record gathering techniques. As a result, the value of historic information diminishes as it becomes less comparable. Moreover, data storage systems have limitations and the cost of housing even electronic records diminishes over time. While these principles are reflected in other statutory and other record retention and destruction policies and practices, no such balancing appears in the OEB proposal. Adopting these other policies where they exist will allow the OEB to quickly and efficiently leverage research, logic, and cross-sector best practices.

### **Implementation Date and Transition Period Duration**

Toronto Hydro respectfully requests that the effective implementation date of this requirement be no earlier than January 1, 2017. This would allow the regulated entities to review and adjust all of their existing systems, policies, and processes to ensure that all applicable records going forward are retained for the prescribed term.

Toronto Hydro appreciates the opportunity to provide its comments on this matter. Please do not hesitate to contact me should you have any questions.

Regards,

*[original signed by]*

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