Direct Energy

November 27, 2015

Via RESS and Canada Post

Kirsten Walli
Board Secretary
Ontario Energy Board
PO Box 2319
2300 Yonge St
Suite 2700
Toronto, ON. M4P 1E4

Dear Ms. Walli

Re: Notice of Proposal to Amend Various Codes of the Board and Specifying a Mandatory Record Retention Period for Regulated Entities;
Board File: EB-2015-0247

Direct Energy (DE) welcomes the opportunity to provide the Ontario Energy Board (the Board) with comments on the Notice of Proposed Amendments to various Codes of the Board, specifying a mandatory records retention period for regulated entities (the Notice) issued November 11, 2015.

General Comments

DE is of the view that the proposal within the Notice to maintain and retain regulatory records for a minimum period of the current calendar year plus nine (9) years, is neither warranted nor prudent. At a time when the Board purports to have a desire to reduce costs to ratepayers, DE is confused as to the rationale behind implementing an unnecessary policy that will not only significantly increase the costs to electricity and natural gas ratepayers to support the physical, operational, and procedural requirements of retaining records for an additional eight years from current requirements in some cases; but also create additional and unnecessary risks for customer data privacy and the potential for customer data breaches.

The Board need look no further than the Office of the Privacy Commissioner of Canada Report of Findings #2007-389 under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) in relation to a security breach of customer credit card information at TJX Companies Inc. /Winners Merchant International L.P., to understand that excessive retention of sensitive customer data poses a significant risk to both customers and corporations.

https://www.priv.gc.ca/cf-dc/2007/TJX_rep_070925_e.asp

Among other things the report concluded:

> "TJX/WMI's experience illustrates how maintaining custody of large amounts of sensitive information can be a liability, particularly if the information does not meet any legitimate purpose or if the retention period is longer than necessary. Although the duty to safeguard personal information exists independent of the requirement to limit collection to the extent reasonable, the two principles are harmonious. Collecting and retaining excessive personal information creates an unnecessary security burden. Thus, organizations should collect

only the minimum amount of information necessary for the stated purposes and retain it only for as long as necessary, while keeping it secure."

And

"Principle 4.5 of PIPEDA states that personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes [Emphasis added]. This provision requires organizations to limit the retention of personal information. It compels organizations to establish maximum periods of retention that meet legal (such as statutory limitation periods for civil lawsuits) and business needs."

Furthermore, the Board's proposals will also create additional risks for regulated entities in civil proceedings. As an example, the Board's current retention requirements mandate that a Marketer/Retailer maintain consumer contracts for a period of 2 years beyond the end of the contract. Such requirements are consistent with the statute of limitations in Ontario. Should the Board's proposed retention policies be implemented, it could result in consumers abusing the Board's complaint process in order to obtain documents and information to be used in a civil proceeding against a licensee, where such information would not otherwise be available and/or compellable. This issue is explored in detail in the submission of Summitt Energy in this proceeding, and DE supports their position and proposal.

Beyond the issues noted above, the Board has not defined all of the documents that it believes fall under the Notice, and instead leaves it to the regulated entity to determine. As noted on pages 3 and 4 of the Notice, "Regulated Entities should exercise their best judgment in determining the types of records that need to be retained to demonstrate compliance with a Regulatory Instrument." DE suggests that this lack of definition of documents will likely cause regulated entities to err on the side of caution and incur additional costs (and subsequently pass those costs onto ratepayers) to retain additional documents unnecessarily.

Response to Request for Comments in the Notice

Format of Records: To date, the records of marketers and retailers have been created in multiple formats including among others, paper, digital, and voice recordings, and will likely continue to be created and maintained in the same manner in the future. As such, there should be no restrictions placed on the format of records, nor a costly mandate to convert all records to a digital format.

Types of Records to be Retained: For the reasons noted earlier in this submission, the Board should prescribe the records to be retained as opposed to relying on the "best judgement" of regulated entities. Furthermore, it is DE's assumption that the mandatory retention periods established by the Board will not apply to any document not required to demonstrate compliance with any Legislation, Regulation or Code.

Temporal Application: DE believes the most cost effective and simplest means to implement any record retention changes is to apply the requirements on a prospective basis from the implementation date determined.

Exceptions to Record Retention Requirements: As noted earlier in this submission, the current record retention requirements established by the Board are reasonable and consistent with the statute of limitations in Ontario, and as a result, should not change. Should the Board be determined to implement the 10 year requirement for regulatory documents, the 10 year retention

term should be established as a cap from the inception of the document. As an example, if regulated entities are required to maintain documents for nine years beyond the calendar reporting period, Marketers and Retailers would potentially be required to maintain contract documents for a period of 15 years; which is well beyond reasonable. Section 4.1.1.a) i of the Electricity and Record Keeping Requirements (RRR) and Section 2.1.1 a) of the Natural Gas Reporting and Record Keeping Requirements – Gas Marketer Licence Requirements requires Marketers and Retailers to report on a quarterly basis, contracts with less than one year remaining in the term of the contract. If the contract being reported had a 5 year term, and the Board implemented an additional nine years retention beyond the reporting year, Marketers and Retailers would essentially be required to retain this contract for 15 years.

Implementation and Transition: Should the Board order changes to the retention periods for regulatory documents, DE recommends a minimum transition period of one year to allow regulated entities to make the appropriate process and system changes to be compliant with the Board's order.

Conclusion:

DE trusts that the Board finds these comments and suggestions constructive and valuable and would like to thank the Board for the opportunity to comment on the proposed amendments contained in the Notice. Should you have any questions or concerns with the above noted recommendations, please contact the undersigned.

Yours sincerely

Original signed by

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