



January 14, 2016

Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Via web portal

Dear Board Secretary:

Re: **Board File No. EB-2015-0247**
Specifying A Mandatory Record Retention Period for Regulated Entities

The Electricity Distributors Association (EDA) is the voice of Ontario's local distribution companies (LDCs). The EDA represents the interests of approximately 70 publicly and privately owned LDCs in Ontario.

On November 11, 2015 the Ontario Energy Board (OEB) issued a notice of proposal to amend various codes to implement a minimum record retention period of current calendar year plus nine years. The OEB indicated that it would invite parties to participate in discussions on application and implementation of the record retention period. On December 10, 2015 the OEB indicated it would be seeking written comments on the proposed amendments rather than hold an in-person consultation.

The EDA understands that the OEB may be seeking to establish a mandatory record retention period of ten years, possibly because the current practices have been found to be lacking for OEB's purposes. The EDA understands that many distributors that have undergone OEB audits have been asked to provide supporting information to regulatory records going back several years, and often distributors found the supporting information records have not been retained because they served no internal operational purposes or current accounting requirements. For example, the current Canada Revenue Agency (CRA) requirements are to keep supporting documents for six years. Other records have been retained for other durations to address other regulatory or operational purposes. The OEB is proposing supporting documents be retained for ten years for records dealing with the Distribution System Code, the Retail Settlement Code, the Affiliate Relationship Code and the Electricity Reporting and Record Keeping Requirements Code. The ten year duration is considerably longer than most current record retention requirements, and encompasses many more records and supporting information than currently retained. This will introduce significant additional costs unless the reporting requirements can be changed to be more practical and cost effective. The EDA suggests further consultation regarding the proposed retention timeframe would be beneficial. This consultation would provide stakeholders an opportunity to understand the review process undertaken by the OEB to determine the proposed retention timeframe and how the costs and benefits to customers were considered.

Types of Records to Retain

Given that the OEB has already carried out several audits and has gained an understanding of what supporting documents may be needed during a certain period of time, and which of these were not being retained by distributors, the OEB should provide a report listing what documents should be retained by distributors for several years. Without an understanding of the results of the audit review, it is difficult for the EDA to know which documents are required to be retained. The Electrical Safety Authority (ESA) also conducts annual audits of the distributor's compliance with ESA regulations and has produced an Audit Guideline to assist distributors and an annual report on findings which identifies where improvements should be made. The EDA recommends that OEB auditors provide a similar report on what information records should be retained, the purpose or value of the retention for regulatory compliance purposes, and expected retention period.

The EDA believes it is not reasonable to propose that distributors should decide individually which records and supporting documentation should be retained to substantiate compliance with each code. In setting any regulatory requirements relating to records retention, it is recommended that the OEB work with the EDA and its members to identify which records and supporting documentation should be retained. The OEB should also review the practicality and cost effectiveness for each record proposed and the practicality and cost effectiveness of retaining the record and supporting documentation for ten years. Given the magnitude of documents that could be captured by this new requirement and the attendant compliance costs LDCs stand to incur, the EDA respectfully recommends further consultation in this regard. The EDA recommends that as part of this consultation the OEB also consider balancing its retention policies with policies related to record destruction.

Format of Retained Records

Electronic records have become the main approach for maintaining documents efficiently but many distributors still use paper records for certain records and supporting documents. For electronic records, the EDA notes that there will be added OM&A costs for maintaining access to electronic records that are only accessible through software that eventually becomes obsolete. This cost may include continuing to pay for licensing fees for obsolete software programs, and maintaining obsolete servers unless considerable expense is incurred to transfer records to new formats. In addition, retaining for several years the telephone recordings, which are used to demonstrate compliance with telephone answering performance requirements, would add considerable costs. For written records, the sheer volume of supporting documentation could be considerable, requiring additional storage and added administration to organize and track. In light of this, the EDA recommends that LDCs be given discretion as it relates to the format of retained records.

To reiterate, the EDA recommends that the OEB review in this consultation the compliance costs and practicality associated with maintaining for ten years each of the records and supporting documentation needed to demonstrate compliance with all the OEB regulatory requirements. Consideration should then be given to determining how the costs would be reduced if the record retention requirements were for fewer records focused on certain key metrics and based on durations for each record given the tradeoffs between costs and benefits.

Prospective Application

The EDA respectfully submits that the new record retention requirements should only apply prospectively as many past records do not exist and likely very few records exist for ten historical years. Implementation of retrospective retention rules are not practical and any enforceable actions taken

against an LDC for non-compliance in this regard would likely come under question from a legal standpoint.

Timeframe for Implementation

As indicated above, the EDA believes more consultation and analysis is required to address the record retention requirements. The EDA believes this consultation may take several months before the all the issues are addressed. As a result, it is difficult to propose an implementation date but the date should allow at least eighteen months after the rules are finalized and come into effect at the beginning of the calendar year. If the consultation begins soon, the implementation target date could be January 1, 2018

Sincerely,



Justin Rangooni,
Senior Director, Conservation & Energy Policy
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