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BY COURIER

January 15, 2016

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

Dear Ms. Walli,

EB-2015-0247 – Amendments to the Ontario Energy Board (OEB) Regulatory Instruments (RRRs, Codes and Rules) and Specifying a Mandatory Record Retention Period for Regulated Entities

This letter is in response to the Ontario Energy Board’s (“OEB”) Notice of Proposal to amend certain OEB Regulatory Instruments and Specifying a minimum Mandatory Record Retention Period for Regulated Entities (“Notice of Proposal”), as originally issued November 11, 2015 and amended on December 10, 2015.

The purpose of the OEB’s proposed amendments is to implement a minimum mandatory retention period of current calendar year plus nine (9) years (the “Mandatory Record Retention Period”) for all records that regulated entities are required to maintain, pursuant to the *Ontario Energy Board Act*, 1999 S.O. 1998, c. 15, Schedule B (the “Act”) and other applicable statutes, regulations, OEB regulatory instruments, licences and orders (collectively, the “Regulatory Instruments”).

Page 3 of the Notice of Proposal refers to, “Other OEB instruments [that] do not contain a specific retention period but do refer to maintaining records for record-keeping and reporting purposes and [that] each of those instruments is being amended to provide that such records must be retained for the Mandatory Record Retention Period”. In providing the comments below, Hydro One assumes that the only instruments that the OEB is currently proposing to amend are those specified in Appendix A to the Notice of Proposal. If this assumption is incorrect, we respectfully request the OEB to specifically identify these other instruments that are not listed in Appendix A but which the OEB intends to amend.

While a single Mandatory Record Retention Period for records that ought to be retained by regulated entities would allow for consistency and certainty, consideration must be given to the manner in which such a Mandatory Record Retention Period is implemented. Hydro One Networks Inc. (“Hydro One”) submits the following in response to the OEB’s specific questions.

- ***The format of records that must be retained, i.e. electronic vs. paper formats***

It is Hydro One’s position that the format of records that must be retained should not be prescribed.

Hydro One submits that the format of records that must be retained (i.e. electronic vs. paper) should remain at the discretion of the regulated entity. As was identified during the Record Retention Working Group session held at the OEB on October 14, 2015, utilities continue to use a combination of electronic and paper formats for their records. Mandating a switch to a system consisting solely of either electronic or paper formats, or further defining which records should be retained in an electronic format vs. a paper format, would: (i) create undue financial and administrative burdens on the utilities, (ii) require a very lengthy transition period for compliance and (iii) delay the effective date for the Mandatory Record Retention Period. As records management is the effective and systematic management of records throughout all phases of their lifecycle, *regardless of their media format*, the OEB should not dictate the format of the records to be maintained by regulated entities. An established classification scheme and retention schedule would apply equally to all records regardless of their media format.

- ***The types of records to which the record retention requirements are applicable, i.e. records required to be retained for regulatory purposes vs. corporate/business/operational records that are not required to be retained for regulatory purposes***

The Mandatory Record Retention Period should not apply to information (whether that information would be described as financial, business, operational or otherwise) other than that which is specifically described and required to be retained per the identified Regulatory Instruments.

It is unclear to Hydro One what is meant by the OEB in its reference to “type” of records. The ***ISO Standard 15489-1: Information and documentation – Records Management*** defines “records” as “*information created, received and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business*”. Each of the Regulatory Instruments listed on page 4 of the OEB’s Notice of Proposal specifically identifies the information that must be maintained in accordance with the new Mandatory Record Retention Period. The Regulatory Instruments do not describe the “*type of records*” to be maintained, but rather the *specific information* that is to be retained which may be contained in one or more corporate records.

- ***The types of records to be retained to demonstrate compliance with Regulatory Instruments, i.e. provisions in regulatory instruments that do not contain specific retention requirements***

Hydro One believes this matter requires further consultation.

The OEB’s Notice of Proposal and the related discussion forum that was held on October 14, 2015 specifically identified, and focused on, the OEB’s initiative to implement a minimum mandatory record retention period for all records that regulated entities are required to maintain pursuant to regulatory instruments. Very little discussion took place about the *types of records* to be retained to demonstrate compliance *with regulatory instruments that do not contain specific retention requirements*. It seems premature at this point to provide specific comments without fully understanding the OEB’s thinking on this topic. As such, Hydro One respectfully requests a formal, consultation process be held. This would provide a more appropriate forum in which participants could better understand the Board’s requirements. Utilities should be provided latitude in determining the types of records retained to meet the Board’s requirements.

- ***The temporal application of the Mandatory Record Retention Period, i.e. whether it should be applied only prospectively or retrospectively in some cases as well***

Hydro One submits that the proposed Mandatory Record Retention Period should apply prospectively.

Implementation on a going-forward basis:

- (a) facilitates change management;
- (b) does not impose additional resource requirements on staff for immediate implementation;
- (c) provides for easily identifiable compliance monitoring; and
- (d) is advisable as tools to allow for auto-classification of legacy electronic records may not be immediately available.

In most cases, existing records have already been classified and assigned their relevant retention period as established by a utility’s existing records management program. It would be administratively burdensome to revisit pre-existing records, both in paper and electronic format, and reclassify and assign to them the new Mandatory Record Retention Period. A retrospective application of the Mandatory Record Retention Period may also result in a utility having to reconfigure an already existing electronic records management system, which would undoubtedly result in increased costs given the time and resources required.

- ***The exceptions to the record retention requirements, for example other statutory requirements that may mandate a shorter record retention period***

The OEB's proposed Mandatory Record Retention Period established in the identified Regulatory Instruments ought to be subject to any provincial or federal statute or regulation that imposes a different retention period.

The Mandatory Record Retention Period is being specified for information required to be maintained by specified OEB Regulatory Instruments listed on page 4 of the Notice of Proposal. These instruments are developed and issued by the OEB as part of its mandated role as an administrative tribunal. Consideration must be given to the legal doctrine of paramountcy in Canadian constitutional law, which establishes that where there is a conflict between valid provincial and federal laws, the federal law will prevail and the provincial law will be inoperative to the extent that it conflicts with the federal law.

- ***Implementation (in force) date for the Mandatory Record Retention Period and the duration of the transition period, i.e. the date that the amendments are in force and the recommended transition period***

Hydro One respectfully requests that a transition period of at least twelve (12) months from the final decision be established before the new Mandatory Record Retention Period comes into effect.

The transition period would enable the utilities to review the relevant components of their records management program, such as their classification scheme and records retention schedule, and make any necessary changes to ensure compliance with the new Mandatory Record Retention Period. The transition period would also allow utilities sufficient time to conduct an up-to-date inventory of any existing electronic records management and document management systems and reconfigure them accordingly to comply with the new Mandatory Record Retention Period, and would apply only to information required to be maintained in compliance with the Regulatory Instruments, created after the end of the transition period.

Hydro One thanks the OEB for the opportunity to comment on the proposed Mandatory Record Retention Period in accordance with the OEB's Notice of Proposal and would be pleased to discuss its submissions further or answer any questions the OEB may have in regard to these comments.

Please direct any questions or comments to Alex Zbarcea, Performance Manager, at Alex.Zbarcea@HydroOne.com or 416-345-6425.

Sincerely,

ORIGINAL SIGNED BY ODED HUBERT

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