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BY E-MAIL AND WEB POSTING

June 3, 2016

**To: All Licensed Electricity Distributors, Transmitters, Generators and Retailers
Independent Electricity System Operator (IESO)
All Licensed Unit Sub-Meter Providers
All Natural Gas Distributors and Marketers
All Interested Parties**

**Re: Mandatory Record Retention Period Policy for Regulated Entities – File No.
EB-2015-0247**

The OEB is prescribing a mandatory record retention period for regulatory records to be implemented by all regulated entities effective on January 1, 2017. The record retention policy requires regulatory records to be maintained for a period of at least six (6) years, calculated from the end of the last calendar year to which the record relates (Mandatory Record Retention Period).

Regulated entities are hereby advised to preserve all regulatory records in existence as of July 1, 2016 and to suspend any regularly scheduled destruction of regulatory records until after January 1, 2017 when the Mandatory Record Retention Period is in effect. Regulated entities must ensure that regulatory records are retained as required by the Mandatory Record Retention Period.

During the latter half of 2016 the OEB will be amending its regulatory instruments¹ to provide for the Mandatory Record Retention Period, which will also apply to records that regulated entities are required to maintain pursuant to the OEB Act,² other statutes in

¹ The OEB's "regulatory instruments" include rules, codes, guidelines, practice directions, forms and record-keeping requirements (RRR) which are set out on the OEB website at <http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms>

² *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the *OEB Act*),

the energy regulatory environment and regulations thereunder³, the licences and OEB orders (collectively referred to as Regulatory Instruments). The amendments apply to all regulated entities, including electricity distributors, transmitters, generators and retailers, unit sub-metering providers and the IESO, as well as natural gas distributors and marketers (collectively referred to as Regulated Entities).

Background

In November 2015, the OEB issued a Notice of Proposal (Notice)⁴ to implement a minimum record retention period of 10 years (current calendar year plus nine (9) calendar years),

The proposed revisions to the OEB regulatory instruments were set out in Appendix A of the [Notice](#). The OEB Notice invited Regulated Entities and other interested parties to provide comments and feedback on the best practices for the application and implementation of the proposed Mandatory Record Retention Period considering several factors.

Policy Decisions

The OEB carefully considered the stakeholder comments, conducted further analysis and has decided to proceed with implementation of a mandatory retention period of at least six (6) years for records required for regulatory purposes. The minimum 6 year retention period is consistent with other mandated retention periods, such as those of the *Ontario Business Corporations Act* and the *Income Tax Act* pertaining to financial records and books of account,⁵ so a Regulated Entity should be able to apply a single consistent record retention period for documents required for financial and tax record-

³ The statutes applicable to Regulated Entities in the energy regulatory environment are the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule A, the *Energy Consumer Protection Act, 2010*, S.O. 2010, c.8, the *Green Energy and Green Economy Act, 2009*, S.O. 2009, c. 12 and regulations enacted under those statutes. In addition, commencing 2017, some Regulated Entities will be subject to the *Climate Change Mitigation and Low-carbon Economy Act, 2016* and the Cap and Trade Regulation.

⁴ Original notice issued November 11, 2015 and Revised Notice issued December 10, 2016

⁵ The *Ontario Business Corporations Act* (OBCA), section 140(2) requires that accounting records are retained by a corporation “for six years from the end of the last fiscal period to which they relate”. The Canadian *Income Tax Act* (ITA), section 230(4)(b) of the ITA requires that records and books of account are retained “until the expiration of six years from the end of the last taxation year to which the records and books of account relate”.

keeping, for other statutory requirements as well as records for OEB regulatory purposes. This Mandatory Record Retention Period is to be applied consistently to all Regulated Entities for all regulatory records. Regulated Entities have the discretion to determine the format of records (paper / electronic / both) to be maintained.

For purposes of the Mandatory Record Retention Period, the OEB adopts the definition in ISO-15489-1 which describes a “record” 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” and that an organization should preserve records as “evidence of actions”.⁶ Regulated Entities may rely on ISO 15489-1 which provides guidance as to the definitions and characteristics of a “record” and “record systems”⁷ as well as the *Electronic Commerce Act, 2000* which provides for legal recognition of electronic documents and electronic retention, subject to certain criteria and conditions.⁸

The OEB expects Regulated Entities to have a thorough understanding of the energy and other regulatory environments in which they operate, their obligations to their various stakeholders and to the regulators and to use their reasonable and prudent judgment as to determine what types of records would be reasonably required to demonstrate adherence to the regulatory environment.

There will be some exceptions to the Mandatory Record Retention Period so as to not conflict with other legislation.⁹ In the case of laws specifying longer retention periods, the longer period must prevail instead of the OEB Mandatory Record Retention Period, since adherence to the latter could result in a breach of the former. Conversely, there may be legal requirements, such as privacy law, that require personal information and documents to be deleted after it is no longer needed for the purpose for which it was collected. The OEB expects that Regulated Entities are knowledgeable about other record retention requirements applicable to their operations, which are outside of the OEB’s jurisdiction, and to adhere to them.

⁶ ISO 15489-1 at page 3 (Terms and Definitions) and 4 (Benefits of Records Management)

⁷ ISO 15489-1 states, in section 7, that “a record should correctly reflect what was communicated or decided or what action was taken” and that “it should be able to support the needs of the business to which it relates and be used for accountability purposes”.

⁸ *Electronic Commerce Act, 2000*, S.O. 2000 c.12

⁹ For example, regulations under the federal *Electricity and Gas Inspection Act* require the owner of an electricity or gas meter to retain certain records for 12 months after the meter or the meter installation ceased to be used, which can result in a retention period of 15 years or longer.

Amendments of OEB Regulatory Instruments

Those OEB regulatory instruments that already specify retention periods for records will be amended to provide for a single and consistent retention period of at least six (6) years (the Mandatory Record Retention Period). Other OEB regulatory instruments which do not specify a retention period but refer to record-keeping and reporting requirements, will also be amended to provide for the Mandatory Record Retention Period.

Hence the amendments to the OEB regulatory instruments will include consistent provisions to the effect that:

- i) Where there are references to record-keeping requirements such records shall be maintained for at least 6 years from the end of the last calendar year to which the records relate; and
- ii) Regulated Entities shall retain records reasonably required to demonstrate adherence with obligations in OEB regulatory instruments and such records shall be maintained for at least 6 years from the end of the last calendar year to which the records relate.

Implementation and Timelines

The Mandatory Retention Record Period policy shall be fully implemented by all Regulated Entities effective January 1, 2017, by which time the amendments to the OEB regulatory instruments will be effective.

However, as of July 1, 2016 Regulated Entities are required to suspend destruction of any records that are required for regulatory purposes and to ensure that, effective January 1, 2017 they are compliant with the Mandatory Record Retention Period policy.

The OEB does not require Regulated Entities to recreate records that were already destroyed pursuant to current retention requirements provided that the record had reached its expiry date. However, the OEB wants to ensure that Regulated Entities do not destroy records that currently exist and to which the Mandatory Record Retention Period would apply. After January 1, 2017 Regulated Entities may resume record management practices in the ordinary course, including record destruction, provided that the regulatory records to be destroyed are at least six years old as at January 1, 2017. Otherwise, regulatory documents are subject to the Mandatory Record Retention Period until they are at least 6 years old.

All inquiries on Mandatory Record Retention Period policy must be sent to IndustryRelations@ontarioenergyboard.ca or 1-877-632-2727 (toll-free within Ontario).

Yours truly,

Original Signed By

Kirsten Walli
Board Secretary