

February 8, 2019



VIA Email, Courier and RESS

Ms. Kirsten Walli
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Independent Electricity System Operator

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Dear Ms. Walli:

**Re: Smart Metering Entity – Application
Fees for Access to Data by Third Parties
Ontario Energy Board File No.: EB-2018-0316**

On December 4, 2018, the Independent Electricity System Operator (“IESO”), in its capacity as the Smart Metering Entity (“SME”), filed an application with the Ontario Energy Board (“OEB”) under subsections 74, 78(2.1), (3.0.1), (3.0.2) and (3.0.3) of the *Ontario Energy Board Act, 1998* (“Act”), and Ontario Regulation 453/06 made under the Act, and subsection 53.8(8) of the *Electricity Act, 1998* for an Order approving fees for access to data by third parties.

On January 25, 2018, the OEB issued Procedural Order No. 1, providing parties with the opportunity to review the draft issues list, as proposed by the SME, and provide any comments or additions to this list. The SME received submissions from five parties: OEB staff, the Electricity Distributors Association (“EDA”), the Building Owners and Managers Association (“BOMA”), the Consumers Council of Canada (“Council”) and the Vulnerable Energy Consumers Coalition (“VECC”). The SME’s submission is below.

OEB Staff’s Submission

OEB staff accepted the seven issues proposed by the SME. OEB staff also submitted that as a component of the SME’s work includes stakeholder engagement the OEB should consider adding the following to the Approved Issues List: *Were the stakeholder engagement efforts undertaken by the SME regarding third party access to data at market prices sufficient?*

The SME does not oppose the addition of this proposed issue.

BOMA's Submission

BOMA accepted the seven issues proposed by the SME and suggested adding the following to the Approved Issues List: *In the event revenues from the TPA program are less than the cost of developing and operating that program, what entity would be responsible for such deficit?*

The SME does not oppose the addition of this proposed issue. In its pre-filed evidence at Exhibit B-3-1, page 1, line 17, the SME stated: "The market price that the SME will be charging will ensure full cost recovery of all costs related to data extraction and additional analysis, as required, from the third parties, such that the SME's ratepayers will not subsidize TPA."

CCC's Submission

CCC has proposed the four new issues below and a revision to Issue 4.

CCC new Issue 1: *What incentives should be in place to ensure that the IESO/SME maximizes the revenues or return to ratepayers?*

The SME opposes the addition of this proposed issue. The SME is a non-profit entity with no shareholders. The types of incentives that appear to be envisioned by the issue (such as an earnings sharing mechanism) would not be applicable in this context.

CCC new Issue 2: *What steps has the IESO/SME taken to ensure that the data is sufficiently protected and to prevent its re-identification, and are those steps sufficient?*

The SME opposes the addition of the proposed issue because it is outside the scope of this application. Like other entities that handle personal information, the SME is bound by privacy laws that extensively govern the use and protection of personal information. The information the SME will be providing to third parties is de-identified information, not personal information. As detailed in the OEB's Decision and Order in EB-2016-0284, the SME established a working group and retained a reputable privacy consultant to identify the data that will exist in the MDM/R and be made available to third parties. There is no need for the OEB to address the issue of privacy in this proceeding since it has already been addressed.

CCC new Issue 3: *How will the IESO demonstrate to the OEB that its prices are truly "market based"? How will the OEB assess this over time?*

The SME opposes the addition of the proposed issue because it will not assist in the disposition of this application. A mechanism that requires the SME to justify its prices to the OEB is

contrary to the concept of a market based pricing. The purpose of using market based prices is to provide the SME with flexibility to offer different products in a new and evolving marketplace. This approach will not work if the SME is required to justify its prices to the OEB. Through this application the SME is seeking the same flexibility that the OEB has provided all LDCs in their pricing for wireless pole attachments in its January 28, 2016 decision “Amending Rate-Regulated Electricity Distributor Licenses to Authorize Market Rates for Wireless Pole Attachments” (EB-2016-0015).

CCC new Issue 4: *What are the overall objectives of the IESO/SME regarding its proposals to provide data to third parties at market prices? How will the OEB determine whether these objectives have been met?*

The SME opposes the addition of the proposed issue because it will not assist in the disposition of this application. As stated in the pre-filed evidence, the SME’s objective with this initiative is to generate revenues earned from third party access at market prices for the benefit of its ratepayers. The SME requires flexibility to assess a new and evolving market to determine how best to generate those revenues. As detailed above, it is contrary to the concept of a market based price to require the SME to justify those rates to the OEB.

CCC revision to Issue 4: *Are the IESO/SME’s proposals and methodology for calculating net revenues generated by third party access and the proposed allocation of those revenues to ratepayers appropriate?*

The SME opposes the proposed revision. As the methodology proposed by the SME is the same as the OEB has already approved for all local distribution companies to calculate the net revenues generated from wireless pole attachments it is appropriate.

EDA’s Submission

The EDA has proposed revisions to four issues as described below and proposed one additional issue be added to the Approved Issues List.

EDA revision to Issue 1:

EDA’s revised wording is: *Does an appropriate level of competition or workable competition exist? And if it does, is the SME’s proposal that access should be provided at market prices appropriate?*

The SME opposes the addition of the proposed issue because it will not assist in the disposition of this application. The EDA states that this change is proposed so that the OEB has the appropriate evidentiary record to support refraining from regulating Third Party Access to

smart meter data. However, this application differs from a situation where the OEB is considering whether to forbear from regulating an existing regulated service (as would be the case in an application under section 29 of the Act for two reasons. First, the market for smart metering data in Ontario does not currently exist nor is it a utility-type service. The application is seeking to provide the SME with the flexibility to adapt its products and pricing as this new market emerges and evolves. Second, the OEB is not being asked to forbear from regulating the SME's services. The OEB will continue to have oversight of the handling of revenues received by the SME from third party access in future Smart Metering Charge applications.

EDA revisions to Issue 2: *What are the terms and conditions of the Smart Metering Entity's Data Use Agreement? Are the proposed access criteria appropriate to support decision making of whether the Smart Meter Entity will enter into a Data Use Agreement with a third party?*

The SME opposes the addition of the proposed issue because it will not assist in the disposition of this application. As detailed in the pre-filed evidence, the SME is not proposing to establish a single standard Data Use Agreement for use by all third parties that request access. The SME is seeking to have the flexibility to be responsive in a timely fashion to the demands of the markets and potential clients, which means that the Data Use Agreement for each third party could vary and will not be subject to OEB review and approval. Additionally, the SME is addressing the issue of risk through the Terms and Conditions and the Data Use Agreements under which third parties will be provided with access to the data. This includes the development of new products and the prices that will be charged for access to these and the Data Use Agreements that each client will sign.

EDA revision to Issue 3: *What are the alternatives to amending the Smart Metering Entity's licence?*

The SME opposes the addition of the proposed issue because it is already covered by Issue 3 filed with the SME's application.

EDA revisions to Issue 4: EDA suggest the issue be amended to use the term 'Smart Metering Charge rate payers' rather than 'SME rate payers'.

The SME does not oppose the proposed change.

EDA's proposed new Issue: *Is the SME's business case robust and balanced? Does it correctly identify and compensate the Party that creates value, the party that incurs the risk?*

The SME opposes the addition of the proposed issue because it will not assist in the disposition of this application. As the OEB has previously determined that the SME must provide third party access, it is unclear what purpose would be achieved by reviewing whether the SME's business case for third party access is "robust and balanced" as EDA suggests. Additionally, the SME's application does not propose to compensate any party – it proposes that the SME's ratepayers benefit by receiving the net revenues earned from third parties paying for access to the data.

VECC's Submission

VECC agrees with the additional issue proposed by OEB staff and proposed two additional issues be added to the Approved Issues List.

VECC proposed new Issue 1: *Was the appropriate type of consent provided by customers for the collection and disclosure of the data?*

The SME opposes the addition of the proposed issue because it is outside the scope of this application for the reasons set out above in response to CCC new Issue 2, and the SME is collecting data in compliance with an OEB Order and the *Electricity Act, 1998*.

VECC proposed new Issue 2: *Has the SME/IESO taken the appropriate steps to ensure the security of the data collected including ensuring the anonymization, aggregation and potential re-identification of information collected from individual ratepayers as required by the relevant laws (including those addressing data collection, use and disclosure, and individual access) of the Province of Ontario and Canada?*

The SME opposes the addition of the proposed issue because is outside the scope of this application for the reasons set out above in response to CCC new Issue 2.

While the SME believes the proposed issue is outside the scope of the hearing it has provided background information about third party access in this application at Exhibit B-1-1, and in the SME's Smart Meter Charge application (EB-2017-0290) at Exhibit C-1-1.

In Exhibit C-1-1 (EB-2017-0290), the SME filed evidence on "Third Party Access Implementation Status and Next Steps, as the OEB had required the SME to file in its decision renewing the SME's licence (EB-2016-0284). Included in Exhibit C-1-1 (EB-2017-0290) is "the Roadmap", which described the steps the SME would be undertaking to implement risk based de-identification in support of achieving the third party access outcomes over the period from the

Smart Meter Charge application to the filing and subsequent approval of this application.

All of which is respectfully submitted.

Yours truly,



Devon Huber
Senior Manager, Regulatory Affairs

cc: Mr. Patrick Duffy, Stikeman Elliott (email)
Michael Bell, Case Manager, OEB (email)
Intervenors to EB-2018-0316 (email)