



EB-2018-0316

**Independent Electricity System Operator, in its capacity as the Smart Metering  
Entity**

**Application for approval to provide access to certain  
non-personal data to third parties at market prices**

**DECISION ON ISSUES LIST  
February 21, 2019**

The Independent Electricity System Operator (IESO), in its capacity as the Smart Metering Entity (SME), filed an application with the Ontario Energy Board (OEB) on December 4, 2018 under sections 74 and 78 of the *Ontario Energy Board Act, 1998* seeking approval to amend its licence to enable it to provide access to certain non-personal electricity usage data to third parties at market prices.

On January 25, 2019, the OEB issued Procedural Order No. 1, providing parties with the opportunity to comment on the draft issues list proposed by the SME. The OEB received submissions from the following five parties: OEB staff, the Electricity Distributors Association (EDA), the Building Operators and Managers Association (BOMA), the Consumers Council of Canada (CCC), and the Vulnerable Energy Consumers Coalition (VECC). The SME filed its response to these submissions on February 8, 2019.

Through their submissions, parties requested that the OEB approve both additions and revisions to the SME's draft issues list. Section 1 of this Decision provides the OEB's findings on party requests for the addition of new issues to the draft issues list. Section 2 provides the OEB's findings on party requests for revisions to the phrasing of certain draft issues proposed by the SME.

For the reasons below, the OEB approves the final issues list as attached in Schedule A.

## Section 1: OEB Findings on Proposed Revisions to the Draft Issues List

### EDA Revision to Draft Issue 1

The EDA requested that draft issue 1<sup>1</sup> be revised as follows:

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 EDA states 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.

The SME opposes EDA's suggested revision to draft issue 1 on the basis that it will not assist in the disposition of the application. Further, the SME states that since the SME is not seeking forbearance from OEB regulation, the EDA's rationale for the change to draft issue 1 is irrelevant.

The OEB will interpret issue 1 as provided in Schedule A broadly to include questions on whether the degree of competition that exists for the proposed data services is a relevant consideration in determining if the SME's proposal to provide access at market services is appropriate, and if so what level of competition is necessary.

EDA's requested revisions to draft issue 1 are therefore unnecessary.

### EDA Revision to Draft Issue 2

The EDA requested that draft issue 2<sup>2</sup> be revised as follows:

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?

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<sup>1</sup> Is the SME's proposal that access should be provided at market prices appropriate?

<sup>2</sup> Is the SME's proposal that access should only be provided to any person who meets the criteria for access established by the SME and enters into a Data Use Agreement with the SME appropriate?

The EDA states “this change is proposed so that the OEB has a complete record of the prices to be charge[d] and the allocation of risk achieved through the operation of the proposed Data Use Agreement.”

The SME opposes EDA’s suggested revision to draft issue 2 on the basis that it will not assist in the disposition of the application. Further, the SME states it is not proposing to establish a single standard data use agreement and that the data use agreements entered into with third parties could vary.

The OEB appreciates that the SME requests flexibility in terms of the data use agreements executed with parties. It is therefore not necessary in this proceeding to review the exact wording of every agreement the SME contemplates offering. However, the OEB notes that the SME has described, at a high level, certain standard terms and conditions that would be included in all agreements.<sup>3</sup>

Questions about whether the proposed standard terms and conditions are adequate are in scope. The OEB considers that draft issue 2 is sufficient to provide for that line of inquiry.

EDA’s requested revisions to draft issue 2 are therefore unnecessary.

### **EDA Amendment to Draft Issue 3**

The EDA requested that draft issue 3<sup>4</sup> be amended to include the following language:

What are the alternatives to amending the Smart Metering Entity’s licence?

The EDA states “this change is proposed so that the OEB can understand the alternatives and how amending the licence achieves the appropriate level of consumer protection.”

The SME opposes EDA’s suggested amendment because the matter is already covered by issue 3 as originally drafted by the SME.

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<sup>3</sup> Exh. B, Tab 1, Sch. 1, p. 3.

<sup>4</sup> Is the SME’s proposal that the Smart Metering Entities’ licence be amended to allow it to provide access to the data on commercial terms determined by the SME to any person who meets the criteria for access established by the SME and who enters into a Data Use Agreement with the SME appropriate?

In the circumstances, the OEB has revised draft issue 3 as follows:

Is the SME's licence amendment proposal appropriate?

The revised issue 3 is now broad enough to allow consideration of alternatives to the SME's proposed licence amendment.

#### **EDA and CCC Revisions to Draft Issue 4**

The EDA requested that the term "SME rate payers" in draft issue 4<sup>5</sup> be revised to the term "Smart Metering Entity Charge rate payers."

The SME did not oppose this proposed change.

CCC requested that draft issue 4 be revised as follows:

Are the IESO/SME's proposals and methodology for calculating net revenues generated by third party access and the proposed allocations of those revenues to ratepayers appropriate?

With respect to rationale for the revised issue 4 language, CCC stated that it is important from CCC's perspective to assess the methodology for calculating the net revenues generated from the IESO's activities.

The SME opposes CCC's suggested revision on the basis that the methodology proposed by the SME for calculating net revenues is the same as the OEB has already approved for local distribution companies to calculate net revenues generated from pole attachments.

The OEB considers the SME's proposed approach to net revenue calculation relevant to this proceeding.

In the circumstances, the OEB revised draft issue 4 to reflect both the EDA's and CCC's proposed recommendations as follows:

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<sup>5</sup> Is the SME's proposal that the net revenues generated by third party access benefit the SME's ratepayers appropriate?

Are the IESO/SME's proposals and methodology for calculating net revenues generated by third party access and the proposed allocations of those revenues to Smart Metering Entity Charge rate payers appropriate?

## **Section 2: OEB Findings on Proposed New Issues**

### **OEB Staff Proposal for a New Issue**

OEB staff recommended that the following issue be added to the issues list:

Were the stakeholder engagement efforts undertaken by the SME regarding third party access to data at market prices sufficient?

The SME in its reply submission stated that it had no concerns with the addition of this proposed issue.

The OEB agrees with the new issue and added it to the issues list.

### **BOMA Proposal for a New Issue**

BOMA recommended that the following issue be added to the issues list:

In the event revenues from the Third Party Access program are less than the cost of developing and operating that program, what entity would be responsible for such deficit?

The SME in its reply submission stated that it had no concerns with the addition of this proposed issue.

The OEB agrees with the new issue and added it to the issues list.

### **CCC Proposal for New Issues**

CCC recommended that the following four issues be added to the issues list.

#### 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 CCC's proposed new issue 1. The SME submits that, as a non-profit entity with no shareholders, the types of incentives that appear to be envisioned (such as an earnings sharing mechanism) are not germane to the proceeding.

The OEB agrees with the SME that the issue of incentives is not appropriate to consider in this proceeding. However, the OEB notes that the efficacy of the SME's efforts can be reviewed through reporting, such as through the annual reports the SME proposes to file with the OEB. The appropriateness of the proposed reporting is in scope of issue 7.

The new issue will therefore not be added to the issues list.

### 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 CCC's proposed new issue 2 on the basis that the proposed issue is outside of the scope of the proceeding. The SME says the information that will be provided to third parties will have no identifiers and will contain no personal information. In any case, the SME submits that it is bound by privacy laws that extensively govern the use and protection of personal information. The SME also contends that the issue of privacy was previously addressed through the SME's 2016 application for renewal of its Smart Metering Entity licence.<sup>6</sup>

The OEB agrees with CCC that it is appropriate to explore the issue of privacy protection in this proceeding. Although the application states that no personal information will be provided to third parties, it explains, "As the risk of re-identification is not zero, the SME will take steps to protect the data and prevent its re-identification." Parties should be allowed to explore what the risk is in the provision of information and what steps have been taken to minimize this risk. Moreover, the OEB notes that the *Electricity Act, 1998* contemplates that the SME's licence will include appropriate privacy-related conditions in connection with the provision of data to third parties: one of the objects of the SME under section 53.8 of that Act is "To provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of privacy by distributors, retailers, the IESO and other persons, ... to the information and data referred to in paragraph 2..." (emphasis added).

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<sup>6</sup> EB-2016-0284

CCC new issue 2 has therefore been added to the issues list as issue 10. It has been expanded to specifically allow the parties to explore what licence conditions, if any, are needed to ensure privacy protection.

#### 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 CCC’s proposed new issue 3 on the basis that the proposed issue will not assist in the disposition of the application. The SME submits that if the OEB were to require the SME to justify its prices, it would lose its flexibility to offer different products in a new and evolving market place.

The OEB finds that it is appropriate to consider the SME’s market-based approach to price setting. However, the OEB is of the opinion that the issue is subsumed by issue 1 as provided in Schedule A. Therefore, although a new issue will not be added, parties will have an opportunity to explore the SME’s approach to price setting through issue 1.

This issue will therefore not be added to the issues list.

#### 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 CCC’s proposed new issue 4 on the basis that the proposed issue will not assist in the disposition of the application. The SME submits that its objectives include generating revenue earned from third party access at market prices for the benefit of ratepayers and that it requires flexibility in order to determine how to best generate those revenues.

The OEB agrees with CCC that it is appropriate to consider whether there should be additional objectives, beyond generating revenue for the benefit of ratepayers. Further, this proceeding will be used to establish how the SME should demonstrate performance against objectives within its reporting to the OEB.

This issue will therefore be added to the issues list.

## EDA Proposal for New Issue

The EDA recommended that the following issue be added to the issues list:

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

The SME opposes the EDA's proposed issue on the basis that the proposed issue will not assist in the disposition of the application. The SME also states that it is unclear what purpose would be achieved by reviewing whether the SME's business case is "robust and balanced". Further, the SME states that the SME's application does not propose to compensate any party, rather, it proposes that the SME's ratepayers receive the benefits associated with earned revenue.

The IESO's business plan is approved by the Minister of Energy, Northern Development and Mines and considered by the OEB in the proceeding for the IESO's revenue requirement, expenditure and fees. To the extent that any aspects of this business plan relate to the SME's proposal for the access to data, this is in scope of this proceeding. However, the OEB is of the opinion that the issue is subsumed by issue 1 as provided in Schedule A.

The issue will therefore not be added to the issues list.

## VECC Proposal for New Issues

VECC recommended that the following two issues be added to the issues list.

### VECC New Issue 1:

Was the appropriate type of consent provided by customers for the collection and disclosure of data?

The SME opposes VECC's proposed new issue 1. The SME submits that the SME is collecting data in compliance with an OEB Order and the *Electricity Act, 1998*.

The OEB has added CCC's proposed issue on privacy on as issue 10. Within scope of this issue is consideration of whether the SME has taken the necessary steps to ensure the privacy of data.

In the circumstances, VECC new issue 1 will not be added to the issues list.

VECC 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 VECC's proposed New Issue 2 for the same reasons it opposes CCC's proposed new issue 2.

As previously stated, the OEB agrees with VECC and CCC that it is appropriate to explore the issue of privacy protection in this proceeding. However, the OEB is of the view that VECC's new issue 2 is satisfied by the inclusion of CCC's new issue 2 (included as issue 10).

VECC's New Issue 2 will therefore not be added to the issues list.

**DATED** at Toronto, **February 21, 2019**

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary

**Schedule A**  
Approved Issues List

Independent Electricity System Operation/Smart Metering Entity  
EB-2018-0316

February 21, 2019

**Approved Issues List****EB-2018-0316**

1. Is the SME's proposal that access should be provided at market prices appropriate?
2. Is the SME's proposal that access should only be provided to any person who meets the criteria for access established by the SME and enters into a Data Use Agreement with the SME appropriate?
3. Is the SME's licence amendment proposal appropriate?
4. Are the IESO/SME's proposals and methodology for calculating net revenues generated by third party access and the proposed allocations of those revenues to Smart Metering Entity Charge rate payers appropriate?
5. Is the SME's proposal to create a new variance account, the Benefits Account, to track the net revenues generated by third party access appropriate?
6. Is the SME's proposal to have the proposed Benefits Account be a sub-account of the Balancing Variance Account appropriate?
7. Is the SME's proposal to annually report on the net revenues generated and tracked in the Benefits Account in the annual report filed with the OEB by May 31<sup>st</sup> appropriate?
8. Were the stakeholder engagement efforts undertaken by the SME regarding third party access to data at market prices sufficient?
9. In the event revenues from the Third Party Access program are less than the cost of developing and operating that program, what entity would be responsible for such deficit?
10. 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? What conditions, if any, should be included in the SME's licence to ensure privacy protection in respect of the data?
11. 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?