



Ontario Energy Board | Commission de l'énergie de l'Ontario

BY EMAIL

May 3, 2019

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Application by the Independent Electricity System Operator (IESO), in its Capacity as the Smart Metering Entity, for approval to provide access to certain non-personal data to third parties at market prices
OEB File Number: EB-2018-0316**

Pursuant to Procedural Order No. 2, please find attached the submissions of OEB staff in the above referenced proceeding.

Yours truly,

Original Signed By

Michael Bell
Project Advisor, Application Policy & Climate Change

cc: Parties to EB-2018-0316

ONTARIO ENERGY BOARD

OEB Staff Submission

**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**

EB-2018-0316

May 3, 2019

Overview

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* (OEB Act) seeking approval to amend its licence to enable it to provide access to certain non-personal data about electricity usage to third parties at market prices.

In OEB staff's view, the SME's application is consistent with its statutory mandate and the previous directions of the OEB. Subject to some suggested edits to the licence amendments proposed by the SME, OEB staff submits that the application should be approved as filed.

Background

The concept of having an agency to “accomplish the government’s policies in relation to its smart metering initiative”,¹ to be called the SME, was entrenched in the *Electricity Act, 1998*, through amendments which took effect in 2006. Shortly thereafter, the IESO was designated as the SME.²

The *Electricity Act, 1998* provides that the SME's objects include the following:

1. To plan and implement and, on an ongoing basis, oversee, administer and deliver any part of the smart metering initiative as required by regulation under this or any Act or directive made pursuant to sections 28.3 or 28.4 of the *Ontario Energy Board Act, 1998*, and, if so authorized, to have the exclusive authority to conduct these activities.
2. **To collect and manage and to facilitate the collection and management of information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect, manage and store the data.**
3. To establish, to own or lease and to operate one or more databases to facilitate collecting, managing, storing and retrieving smart metering data.
4. **To provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of**

¹ *Electricity Act, 1998*, s. 53.7(1).

² O. Reg. 393/07 (Smart Metering Entity), effective March 28, 2007.

privacy, by distributors, retailers, the IESO and other persons,

- i. **to the information and data referred to in paragraph 2, and**
 - ii. to the telecommunication system that permits the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including access to its telecommunication equipment, systems and technology and associated equipment, systems and technologies.
5. To own or to lease and to operate equipment, systems and technology, including telecommunication equipment, systems and technology that permit the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including owning, leasing or operating such equipment, systems and technology and associated equipment, systems and technologies, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
 6. To engage in such competitive procurement activities as are necessary to fulfil its objects or business activities.
 7. To procure, as and when necessary, meters, metering equipment, systems and technology and any associated equipment, systems and technologies on behalf of distributors, as an agent or otherwise, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
 - 8. To recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities.**
 9. To undertake any other objects that are prescribed by regulation.³

It is apparent from item 4 that one of the very purposes for creating the SME was to make information about electricity consumption and use available to third parties.

Under section 57 of the OEB Act, the SME cannot exercise its functions without a licence from the OEB. The SME's licence includes a condition mirroring the SME's statutory objective:

³ *Electricity Act, 1998*, s. 53.8 (emphasis added).

6. Non-Discriminatory Access

6.1 The Licensee shall provide and promote non-discriminatory access by Distributors, Retailers, the IESO, and other persons to the Licensee's:

- (a) information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from Distributors; and
- (b) telecommunication system that permits the Licensee to transfer data about the consumption or use of electricity to and from its databases...⁴

It follows that the current application is not about whether the SME should make electricity consumption and use data available to third parties. It is required to do so, by the terms of the *Electricity Act, 1998* and its licence. The issue, rather, is how the SME should make such data available. In particular, how should the SME recover its costs for providing the data (bearing in mind that another of its statutory objects is “[t]o recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities”)?⁵ And how should the SME ensure the protection of privacy in connection with the release of the data?

For the last few years, the SME has been working on how to make the data available. In its January 26, 2016 Order extending the SME's licence⁶, the OEB expressed its opinion on the SME's progress in that regard:

Innovation is about creating new value. **The SME, through its provision of reliable provincial energy consumption data from over 4 million meters, was in part established to provide an opportunity for provincial electricity agencies, individual local distribution companies, and third parties seeking to create new value to benefit consumers. Ontario's head start on smart meters is an opportunity that could be leveraged to enhance innovation. The opportunity must be pursued in a more timely way.** The OEB is of the view that closer regulatory scrutiny is required to ensure that the SME move with increased speed to enhance the value of the MDM/R data.⁷

In that Order, the OEB required the SME to collect from distributors, beginning in 2017, certain information associated with each meter (namely the postal code, the distributor rate

⁴ SME Licence ES-2016-0284. Substantially the same condition has appeared in the SME's licence since the first licence was issued, on an interim basis, in 2007 (ES-2007-0750).

⁵ Although the *Electricity Act, 1998* refers not only to cost recovery but to “an appropriate return approved by the Board”, the SME's approved rates currently do not include a return component and are based strictly on cost recovery: see the OEB's most recent SME rates decision, issued on March 1, 2018 (EB-2017-0290).

⁶ EB-2015-0297

⁷ At p. 3 (emphasis added). The MDM/R refers to the SME's Meter Data Management Repository.

class, and occupant change data – modified where necessary to render it non-personal information), and to prepare an implementation plan for providing third party access to the data.

The SME filed an implementation plan with its licence application later that year. The OEB noted that the SME had “established a working group which included a broad selection of LDCs across the province and representatives from the Ministry of Energy, EDA, the IESO and the OEB”, and commended the working group on the progress that had been made since the January 26, 2016 Order.⁸ The OEB also noted that the SME had, on the advice of the Information and Privacy Commissioner, engaged a privacy consultant to conduct a risk assessment. The OEB continued the requirement to collect certain non-personal information from distributors (the postal code associated with a meter, etc.). However, the OEB did not say anything about what, if anything, the SME should charge for providing third party access to the data.

The SME provided a further update on its implementation efforts in its rates application for the period 2018-2022. The SME indicated that it “intends to make a submission to the Board in 2018 with a proposed model for third party access to data in the MDM/R, which may include monetizing this access.”⁹ The OEB approved a settlement in that proceeding, without commenting on the third party access question. The SME’s proposed model is what is now before the OEB.

OEB Staff Submission on the Issues in this Proceeding

1. Is the SME’s proposal that access should be provided at market prices appropriate?

The SME expects to have the following three types of service offerings available to third parties in the near-term as further described below:

- a) Public Offerings – high level aggregations (no further de-identification required)
- b) Standard Private Offerings – pre-designed extracts based on popular data requests, with standard, validated de-identification filters; and
- c) Custom Offerings – unique (or first-time) data requests that will require a custom approach to the provision of access.¹⁰

Under the SME’s proposal, public offerings would be available at no charge through a publicly accessible webpage, and the costs associated with such public offerings would be

⁸ Decision and Order, November 24, 2016 (EB-2016-0284), at pgs. 5 and 6.

⁹ EB-2017-0290, Exh. C-1-1, p. 7.

¹⁰ Exh. B-2-1, p. 1.

recovered through the Smart Metering Charge.¹¹ For standard private and custom offerings, the SME proposes to charge market based rates, i.e., whatever price third parties are willing to pay for access to a specific MDM/R dataset. Importantly, the SME explains that data will not be sold for a price that does not achieve full cost recovery.

The net revenues from the sale of MDM/R data would be used to offset the SME's revenue requirement and therefore reduce the smart metering charge which is paid to the SME by distributors and in turn recovered by the distributors from their customers. The monetization of the data would "create a new value stream to benefit ratepayers".¹²

OEB staff supports the SME's proposal that the information available at a high level of aggregation (public offering) should be provided at no charge on the SME's website. The SME may wish to elaborate on why it proposes that "those who access these products will be required to agree to certain terms and conditions before access will be granted."¹³ In OEB staff's view, any further clarification on the need of any barriers to obtaining high-level aggregations would be helpful.

For the other type of service offerings, OEB staff generally agrees with the notion of charging market based prices in order to maximize revenues to the ultimate benefit of ratepayers who, after all, have paid for creating and maintaining the MDM/R and other smart metering infrastructure.

The OEB recognized that the likely benefits to consumers of third party access to data are not strictly financial. As described in the January 26, 2016 Order¹⁴, the data has the potential to assist industry develop more cost-effective and efficient electrical transmission and distribution plans, and design and implement targeted energy efficiency programs. While these various uses may not provide a direct or immediate financial benefit to consumers, ultimately, the longer-term result of planning efforts informed by actual data should be lower costs and a more efficient electrical system.

Charging a market price, as opposed to a specific, pre-approved rate, is appropriate in the circumstances. The SME has explained that it anticipates that it will receive numerous and different requests for data from multiple parties. The response in each case will need to be tailored accordingly. It is not practicable to create a generic rate that would apply to all anticipated requests.

¹¹ SME response to EDA interrogatory 16.

¹² SME Argument-in-Chief at para. 22.

¹³ Exhibit B-2-1, p. 1.

¹⁴ EB-2015-0297.

As the SME notes, there is some precedent for the OEB approving a market based rate by way of a licence amendment. Since the OEB's Decision and Order on January 28, 2016,¹⁵ the distribution licence of every rate-regulated distributor has included the condition that the distributor "provide access for wireless attachments to its poles on commercial terms normally found in a competitive market". The licence further specifies that wireless attachments are not subject to the OEB-approved rate for wireline attachments.

Based on the evidence filed by the SME in this proceeding about its stakeholder engagement efforts to date, OEB staff submits that it appears that there is general support among stakeholders for the market price model for services other than the public offerings.

The one concern OEB staff has about this model is its potential impact on the non-profit sector (such as university professors, municipalities, or non-profit think tanks). The MDM/R data, at a more granular level than the SME anticipates to make available through its Public Offerings, may be of value to not-for-profit entities, but setting the price based on a mark-up above cost could make the price prohibitive. There is a public interest in ensuring that such parties have reasonable access to the data. As the OEB noted in the January 26, 2016 Order,

The value of a province-wide database of customer consumption data would support many activities at the provincial or regional level including, among others: the design of conservation and demand management programs, the assessment of the effectiveness of time of use pricing, the design of distribution rates and time of use prices, and the regional planning of transmission and distribution systems.¹⁶

It is not only distributors and other commercial entities who are in a position to harness the value in the SME data. As an example, the IESO's own evidence in this proceeding indicates that the Canadian Institute for Health Information provides a discount on data requests to the non-profit sector.¹⁷

Accordingly, OEB staff submits that the SME should be required to provide access to entities with not-for-profit status on a pure cost recovery basis. This would not include information that must be provided to the OEB or the Ministry of Energy, Northern Development and Mines. As the SME properly acknowledges, there would be no charge for such information.¹⁸ In OEB staff's view, charging the non-profit sector on a cost recovery basis rather than a market price would not run counter to the requirement in

¹⁵ EB-2016-0015.

¹⁶ *Ibid.* at p. 2.

¹⁷ See the report prepared for the SME by MNP LLP entitled "Third Party Data Access: Market Analysis and Costing Model: Final Report" (October 18, 2018), Exhibit I, Tab 1.0, Schedule 1.02, Attachment 1, pages 9, 13 and 14.

¹⁸ SME Response to OEB Staff interrogatory 9.

section 53.8 the *Electricity Act, 1998* and section 6 of the licence to provide and promote access to the data on a “non-discriminatory” basis. The intent is actually to ensure that everyone who could benefit from the information has reasonable access to it – in other words, it is to address the concern that market rates may be inherently discriminatory against non-commercial entities.

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?

At Exhibit B, Tab 1, Schedule 1 of the SME’s application, the SME states: “The data being collected by the SME is not personal information; it is de-identified information. As the risk of re-identification is not zero, the SME will take steps to protect the data and prevent its re-identification.” Given the presence of risk, OEB staff submit that 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 is appropriate.

The application outlines the principles that will guide the SME’s assessment of data requests including, among others, privacy, security and ratepayer value. The application also summarizes the types of contractual provisions that the SME proposes to include in the Data Use Agreement (DUA) it enters with each third party who obtains access.

As further discussed in OEB staff’s submission on Issue 10, OEB staff does not have concerns with the proposed terms of access principles and DUA framework (as the OEB noted in its Decision on the Issues List, it is “not necessary in this proceeding to review the exact wording of every agreement the SME contemplates offering.”). OEB staff is also supportive of the SME’s proposal to establish an Ethics Review Committee (the Committee), as recommended by its privacy consultant, to provide expert guidance and support to the SME in situations where it has ethical concerns related to a third party data request. The Committee has not yet been formed.¹⁹ OEB staff submits that it would be desirable to have the SME establish the Committee prior to the SME entering into any third party access agreement.

¹⁹ SME response to VECC interrogatory 5.

3. Is the SME's licence amendment proposal appropriate?

In response to OEB staff interrogatory 5, the SME proposed specific language for the requested licence amendments. The SME reproduced its proposed language in its Argument-in-Chief.

At the end of this submission, OEB staff provides some suggested edits to the SME's proposal, for the OEB's consideration.

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?

To accurately track costs, the SME proposed to implement the recommendations in the BDR Cost Allocation Study.²⁰ This includes the SME developing a time tracking system to be used by its staff to record time spent on any third party data request. Further, the SME recognizes that it may be supported by the IESO's mainstream business in areas such as legal, human resources, and information technology. The SME indicates that the IESO will appropriately bill the SME for any support provided by its mainstream business in a manner consistent with the recommendations of the BDR report.

The SME's reliance on BDR's recommendations for purposes of tracking and accounting for costs provides OEB staff with reasonable assurance that costs will be accurately tracked and facilitate the necessary cost recovery assessment.

With respect to the allocation of net revenues to SME ratepayers, the SME proposes to allocate the net revenues on a pro-rata basis using the number of meters in the OEB's most recently published Yearbook of Electricity Distributors. The SME also proposes to follow the methodology approved through the Smart Meter Charge application to dispose of balances in the Balance Variance Account (BVA).²¹ Specifically, if the year-end balance in the BVA is a surplus which exceeds \$2.5 million and results in an amount of \$0.05 per meter or greater, the SME's annual report to the OEB would include the amount to be returned to SME ratepayers three months following the SME's filing of their annual report, unless the OEB provides alternative direction.²²

OEB staff supports the proposed allocation of net revenues as it mirrors the manner in which the SME charge is derived. OEB staff also supports the SME's proposed disposition

²⁰ See the report prepared for the IESO by BDR NorthAmerica Inc. entitled "Report on Methodology for the Allocation of Shared Costs To Certain Identified Activities" (July 16, 2018), Exhibit I, Tab 4.0, Schedule 1.08.

²¹ EB-2017-0290.

²² SME response to OEB staff interrogatory 8.

methodology as it is consistent with the OEB's previously approved approach for disposition of the BVA.

OEB staff notes that any credits to SME ratepayers would be tracked in Account 1551 (Smart Meter Entity Charge Variance Account) and refunded to electricity consumers in an Incentive Rate-setting application or Cost of Service rate application.

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?

OEB staff considers the SME's proposal to create a Benefits Account for purposes of tracking net revenues generated by third party access to be reasonable. An account, or sub-account, would be necessary in OEB staff's view to allow for the future disposition of any surplus arising from this initiative to ratepayers.

6. Is the SME's proposal to have the proposed Benefits Account be a sub-account of the Balancing Variance Account appropriate?

OEB staff considers the SME's proposal to create a new sub-account to track the net revenues generated by third party access to be reasonable.

The SME proposes that the Benefits Account be established as a separate sub-account to the current Balance Variance Account (BVA). Currently, the BVA includes the following three sub-accounts approved by the OEB in the proceeding approving the smart metering charge for the 2018-2022 period:²³

1. Costs Account
2. Revenue Account
3. Service Level Credits Account

Including the Benefits Account as a sub-account to the BVA is logical as it aligns with the general approach previously approved by the OEB for SME tracking and reporting of financials.

²³ EB-2017-0290.

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 31st appropriate?

OEB staff submits that the SME's proposal to report annually on the net revenue generated and tracked in the Benefits Account is appropriate. OEB staff would expect (and the OEB may wish to make clear) that the report would include not only the net revenue but also show how that number was derived – that is, it would show the total revenue from the program and the program costs. In addition, OEB staff recommends that the SME also report annually on the number of individual entities that have purchased data under a Custom Offering or Standard Private Offering. This would inform the OEB about the progress of the Third Party Access initiative as well as provide a general sense of its market reach.

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

The stakeholder engagement efforts carried out to-date are described in detail by the SME in its application, through interrogatory responses, and on the dedicated SME webpage.²⁴

The SME's engagement efforts included the creation of a Data Strategy Advisory Council (DSAC), the undertaking of third party access-related pilot projects, consultation with Ontario's Information and Privacy Commissioner, as well as two separate public webinars. The learnings from these various undertakings informed the SME's third party access proposal.

The DSAC represents the SME's primary stakeholder engagement effort, which initiated in June 2017. The fifteen-member committee includes LDCs and private companies with observers from the OEB, Electricity Distributors Association and the provincial government. In April 2017, the SME released a call for nominations for DSAC membership. This call was open to any party wishing to provide advice to the SME regarding the development of its implementation plan to provide third party access to smart meter data. The SME explains that the views of the DSAC were taken into account in several ways, including, but not limited to, during the design and implementation of pilot projects, when exploring potential data products (i.e., public products, as well as standard and custom offerings), and when examining potential data pricing models.²⁵

²⁴ <http://www.ieso.ca/Sector-Participants/Smart-Metering-Entity/SME-Overview>.

²⁵ <http://www.ieso.ca/-/media/Files/IESO/Document-Library/engage/tpa/dsac-sme-2019-03-07-final-engagement-summary-report.pdf?la=en>

OEB staff has no concerns with these efforts, as they appear to have provided interested parties with reasonable opportunities to make their views known.

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?

OEB staff understands that, because the SME is a not-for-profit entity, any shortfalls in revenue from the program would be borne by all rate-payers, through the smart metering charge. That is why it is critical that the SME take all appropriate steps to ensure that revenues are sufficient to fully recover the costs to provide the service, and report to the OEB net revenues on an annual basis.

The SME proposes that data will not be sold to third parties for a price that does not achieve full cost recovery. Unless the SME deviates from its proposal, the SME should not be in position where it fails to recover its costs.

OEB staff notes that the development costs incurred to date by the SME to set up the third party access framework are being recovered through the Smart Meter Charge. OEB staff understands that any future net revenues from the program would go to offset these and future costs.

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?

In assessing the SME's application, the protection of privacy is an important consideration. The *Electricity Act, 1998* expressly contemplates that licence conditions pertaining to privacy may be appropriate: as noted above, one of the SME's objects 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..."

OEB staff notes that the courts have found that individuals may have a reasonable expectation of privacy in respect of their meter consumption data, albeit a "significantly attenuated" one.²⁶

²⁶ See *R. v. Orlandis-Habsburgo*, [2017 ONCA 649](#), especially para. 134.

The SME explains that the data in question is not personal information – it is “de-identified” such that it does not reveal anything about a particular home or business. However, the SME acknowledges that “the risk of re-identification is not zero”, and therefore pledges to “take steps to protect the data and prevent its re-identification”.²⁷

OEB staff understands the primary components of the SME’s risk mitigation plan are as follows:

1. The rules and protocols for de-identification of electricity data;²⁸ and
2. Terms of Access Principles, including that users must execute a Data Use Agreement.²⁹

With regard to primary component 1, the SME describes through its response to OEB staff interrogatory 13 that it has taken a best-practices approach to electricity data de-identification. Further, the IESO states that “[a]t the core of the implementation plan is a data de-identification methodology that is the gold standard in the disclosure control community. This methodology is aligned with the Information & Privacy Commissioner of Ontario's De-identification Guidelines.”³⁰

With regard to primary component 2, the Terms of Access Principles proposed by the SME are described at Exhibit B, Tab 1, Schedule 1 of the application as follows:

The SME will provide third party access to the data, on appropriate terms. This will take two forms:

- (a) The principled assessment of each request for access to the data; and
- (b) The contractual terms upon which access to the data shall be granted.³¹

In OEB staff’s view, the SME has provided sufficient evidence to demonstrate that it has approached the privacy issue with appropriate care, including materials prepared by its privacy consultant. It has worked with a privacy consultant to establish rules and protocols for de-identification. OEB staff is satisfied that the SME has taken sufficient steps to protect data from re-identification.

At the end of this submission, OEB staff proposes certain edits to the SME’s proposed licence conditions. One of these is meant to establish a clear standard of care for the SME in its management of the privacy risk.

²⁷ Exhibit B, Tab 1, Schedule 1, p. 1.

²⁸ SME response to OEB staff interrogatory 13.

²⁹ Application, Exhibit B, Tab 1, Schedule 1.

³⁰ <http://www.ieso.ca/en/Sector-Participants/Smart-Metering-Entity/SME-Overview>

³¹ Exhibit B, Tab 1, Schedule 1, p. 1.

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?

The objective (or value) of providing third party access to consumption data was previously determined by the OEB³² and includes the enabling of activities such as conservation and demand management program design, the assessment of the effectiveness of time-of-use pricing, the design of distribution rates and time-of-use prices, regional planning of transmission and distribution systems, and assisting third parties in “developing new innovative products and services that will enhance customer choice and control”.³³ To facilitate an assessment of the SME’s performance against this objective, OEB staff proposes that the SME annually report on the number of individual entities who have purchased data under a Custom or Standard offering. At the end of this submission, OEB staff provides some suggested wording to include in the SME’s licence related to this reporting requirement, for the OEB’s consideration.

OEB staff considers the SME’s proposal to monetize the data in order to create a new value stream to the benefit of ratepayers to be another objective. Given this objective of generating revenues to reduce the costs ultimately borne by ratepayers, a review of the costs and revenues in a future proceeding will provide an opportunity for the OEB to assess whether the objective is being met and whether the OEB should address any improvements in performance that may be required from the SME.

The SME’s current licence expires on December 31, 2021. OEB staff submits that the SME’s application to renew the licence beyond that date would provide the OEB with a good opportunity to review the third party access initiative and if necessary to adjust the applicable licence conditions.

³² EB-2015-0297.

³³ January 26, 2016 Order, p. 2.

OEB Staff's Suggested Edits to the SME's Proposed Licence Conditions

OEB staff agrees with the SME's proposed definition of "De-identified Information", subject to minor typographical edits:

"De-identified Information" means information regarding Distributors, consumers, Retailers, or any other person where the information has been sufficiently de-identified such that the Distributor's', consumer's', Retailer's', or other person's particular information cannot reasonably be identified.

OEB staff agrees with the SME's proposal to rename section 9 as "Restrictions on Provision of Information and Third Party Access". OEB staff suggests the following edits to the SME's proposed section 9.3, which are meant to clarify that access is to be provided at market rates (except in the case of non-profit or government entities, or in the case of Public Offerings):

9.3 Notwithstanding any other term of this Licence other than sections 9.7 and 9.8, the Licensee shall provide access to De-identified Information to any person who requests it, provided that the person:

(i)(a) meets the terms of access established by the Licensee; and
(ii)(b) enters into an agreement with the Licensee governing access to the De-identified Information.; and
(c) pays the market price for access, unless the person is a non-profit or government entity, in which case the price paid shall be set at the minimum level required to enable the Licensee to recover its costs of providing the access.

OEB staff proposes that a new section 9.6 be added to require the SME to take all reasonable precautions to prevent the re-identification of the data:

9.6 The SME shall take all reasonable precautions to ensure the De-identified Information that it provides to third parties pursuant to section 9.3 cannot be re-identified.

OEB staff also proposes that a new section 9.7 be added to clarify that section 9.3 does not apply to information that the SME may be required to provide to the OEB, or that may otherwise be required by law. Similarly, OEB staff proposes that a new section 9.8 be added to clarify that section 9.3 does not preclude the SME's proposed Public Offerings:

9.7 For greater certainty, section 9.3 does not apply to any request for information made by the Board under section 8 of this Licence, or to any other request for information that the Licensee is required by law to fulfil.

9.8 For greater certainty, section 9.3 does not preclude the Licensee from making highly aggregated De-identified Information available free of charge to the general public on its website or otherwise, provided the Licensee takes all reasonable precautions to ensure the De-identified Information cannot be re-identified.

OEB staff suggests the following edits to the SME's proposed section 15:

15. *Third Party Access Net Revenues Annual Report*

15.1 *The Licensee shall, by May 31st of each year, ~~annually~~ report to the Board, for the previous calendar year:*

- (a) the gross revenue generated from providing third party access to De-Identified Information under section 9.3;*
- (b) the costs incurred by the Licensee in fulfilling third party requests for access to De-Identified Information under section 9.3;*
- (c) the net revenue generated from providing third party access to De-Identified Information under section 9.3 ~~from the third party access to De-Identified Information;~~ and using a methodology and form determined by the Board*
- (d) the number of individual entities that purchased De-Identified Information from the Licensee under section 9.3.*

All of which is respectfully submitted