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May 7, 2019

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Our File No. 185554

**VIA RESS, EMAIL AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: EB-2018-0316: IESO, SME Application  
– Fees for Third Party Access to Meter Data**

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Please find enclosed herewith BOMA's Written Submission. We apologize for the lateness of this Submission

Yours truly,

**FOGLER, RUBINOFF LLP**

  
Thomas Brett

TB/dd

Encls.

cc: All Parties (*via email*)

**ONTARIO ENERGY BOARD**

**Independent Electricity System Operator (IESO),  
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**

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**Written Submission of**

**Building Owners and Managers Association of Greater Toronto ("BOMA")**

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May 7, 2019

**Tom Brett**  
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**Counsel for BOMA**

## Written Submission of BOMA

### 1. Introduction

The Independent Electricity System Operator (“IESO”), acting as the Smart Metering Entity (“SME”), filed an application with the Ontario Energy Board (“OEB” or the “Board”) on December 4, 2017, pursuant to sections 74 and 78(2.1), (3.0.1), (3.0.2), and (3.0.3) of the Ontario Energy Board Act, 1998 (the "OEB Act") seeking an order:

- (a) authorizing the SME to charge market prices for third party access (“TPA”) to de-identified information (as defined in the proposed amendments to the SME’s licence and referred to below as the “data”);
- (b) approving the establishment of a new sub-account, the Benefits Account, under the Balancing Variance Account (“BVA”) to track the net revenue generated from TPA; and
- (c) amending the SME’s licence, as described below, to allow the SME to:
  - (i) provide access to the data to any person who meets the terms of access established by the SME and enters into a Data Use Agreement (“DUA”) with the SME; and
  - (ii) annually report the net revenue generated by TPA accumulated in the Benefits Account, a sub-account of the BVA.

### 2. The Proposed Licence Amendments

The SME is proposing to add a new definition of de-identified information to its licence:

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

The SME is proposing to rename Section 9 as “Restrictions on Provision of Information and Third Party Access” and to delete the existing Section 9.3 and replace with the following:

9.3 Notwithstanding any other term of this License, the Licensee shall provide access to De-identified Information to any person who:

- (i) meets the terms of access established by the Licensee; and
- (ii) enters into an agreement with the Licensee governing access to the De-identified Information.

The SME is also proposing to add a new section 15:

15. Third Party Access Net Revenues

15.1 The Licensee shall annually report the net revenue generated from third party access to De-identified Information to the Board using a methodology and form determined by the Board.

3. Existing Legislation, SME Licence, and Board Decisions

Part IV.2 of the Electricity Act establishes the objects of the SME, which include:

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 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.

Section 78(2.1) of the OEB Act provides that the SME cannot charge for meeting its obligations under Part IV.2 of the Electricity Act without an Order of the Board.

The electricity objectives of the Board include:

1(1)3 To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the customers' economic circumstances.

1(1)4 To facilitate the implementation of a smart grid in Ontario.

The SME's licence contains the following provision, which reflects Part IV.2, paragraph 4 of the Electricity Act:

"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...".

In EB-2016-0284, in an application from the SME to renew its licence, the OEB renewed the licence and required the SME to collect smart meter data, for each smart meter, including both residential and small business smart meters, by postal code, distributor and commodity rate class, and occupant change data. The decision stipulated that such information be modified when necessary to ensure that it was not personal information.

#### 4. The TPA Goals

The objectives of the program should include both utilization of a potentially reliable data base, innovation in energy customer services, and enhanced energy efficiency. Success is

determined by monitoring the degree to which public and private sectors participate. The success of the program can be measured in the tranches of the third party access initiative, public offering, standard private offerings, and custom offerings. Benefits to customers will be longer term in the form of enhanced energy services.

In its January 26, 2016 Order, extending the SME licence (EB-2015-0297), the Board noted that information through effective utilization of the province's smart meter data was a key objective of the program. It stated that:

"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 Board's objectives for electricity include both pursuant of energy efficiency and the smart grid, and the TPA should be tailored to further those objectives, for example, to focus on public and private sectors' attention on regions, municipalities, parts of municipalities, where conservation programs should be enhanced.

5. Access at Market Price

BOMA is of the view that the Board should not authorize the SME to charge market prices for third party access to de-identified information requested in their application. Rather, it should allow the SME to provide such information at its cost of providing that information, and for an amount no less than its cost. Those costs should include all costs of the program commencing with the date of the Board's decision in this case. The only exception to the "charge at cost" would be information provided to the general public on

its website and information provided to the Board and/or the Government of Ontario. Public and private sector participants should pay the costs of providing the data to them.

While, as a customer representative, BOMA appreciates the SME's objective to provide net revenues from selling the data to customers at market rates, this approach raises several problems, which, in BOMA's view, outweigh any future net revenue benefits that might accrue to smart meter charge payers, which BOMA predicts would, in any event, be minimal.

First, there is currently no real market for smart meter data in Ontario. The SME is a monopoly provider of such data as distributors have access to only their customers' data, and may not wish to have that data.

Being a monopoly, the SME would sell data to customers for whatever they are prepared to pay, regardless of the costs incurred to produce and package the data. In the absence of a market, those negotiations will be difficult, and will lead to claims of discrimination or abuse from the entities paying higher amounts. It is naïve to think the negotiated "deals" will remain secret for long. Sale at costs will clarify the pricing structure, and not be open to charges of discrimination.

Given the SME is a not-for-profit agency, and does not earn a utility type return, the costs should not include a return component. Access at cost allows the SME to differentiate its pricing without legal challenges.

6. Pricing Safeguards

BOMA agrees that access to data should only be provided to a person who meets the criteria for access established by the SME and enters into a Data Use Agreement with the SME. BOMA supports the establishment of an Ethics Review Committee, but one which includes at least one customer representative, and a majority of non-SME/IESO members.

Given that there would be no net revenue to accrue and dispose of under BOMA's proposal, there would be no requirement for a new variance account.

BOMA considers that the SME's stakeholder engagement efforts to date, while extensive and made in good faith, were deficient in that the Data Strategy Advisory Group did not include representatives of customer groups, either residential customers (which constitute the large majority of smart meter users), or small business customers.

The DSAC should be maintained, should be expanded to include relevant customer representatives (two or three representatives) and be asked to review the SME's full implementation plan when available, and to meet on at least a semi-annual basis going forward.

7. De-Identification Privacy and Risk of Disclosure

The SME's evidence is that the risk of identifying a specific residence with electricity consumption data is very small, but not zero. The SME has provided some features of its Distribution Access Agreement that would discourage any improper disclosure, although it has not provided a copy of the Agreement. The SME has also indicated that it will make a "principled assessment" of each request for access. BOMA believes that a

Data Use Agreement template should be provided to the advisory committee, and should be included in its Annual Report to the Board, and be placed on the SME's website. SME's evidence is that it will provide data by postal code with as few as three customers. The SME should examine and review with the DSAC, whether that is too granular and determine what the program be effective with somewhat less granularity, for example, postal code with fifteen residences.

8. The Annual Report

BOMA believes that the SME's Annual Report should be comprehensive, and should include the number of individual entities that have purchased data under the custom offering or standard private offering the public information packages available on the IESO's website, the names of the purchasers and the breakdown of the SME's costs in providing each transfer of data pursuant to Data Use Agreements, with total SME expenditure for the program, and the budget for the following years. The SME should also provide a detailed implementation plan and budget for the remainder of 2019 and 2020, within ninety days of the Board's decision in this case. Most important, the Report should set out the program overall objectives and the degree to which the objectives were reached in that year.

**All of which is respectfully submitted.**