



**EB-2007-0750**

**IN THE MATTER OF** the *Ontario Energy Board Act*,  
1998, S.O. 1998, c. 15, Schedule B;

**AND IN THE MATTER OF** an application by the  
Independent Electricity System Operator for the  
Smart Metering Entity licence.

**Before:** Ken Quesnelle  
Presiding Member

Karen Taylor  
Member

## **DECISION AND ORDER**

January 27, 2011

### **Background**

The Independent Electricity System Operator (the “IESO” or the “Applicant”) was designated as the Smart Metering Entity (“SME”) by Ontario Regulation 393/07 made under the *Electricity Act, 1998*. Section 57 of the *Ontario Energy Board Act, 1998* (the “Act”) requires the SME to be licensed to exercise its powers or perform its duties under the *Electricity Act, 1998*.

The IESO filed an application on September 4, 2007 with the Ontario Energy Board (the “Board”) under section 60 of the Act for the SME licence. The Applicant requested that the SME licence be issued on or before September 14, 2007 as this was the date it intended to begin the initial cutover to production operations.

Section 5.4.1 of the Distribution System Code requires electricity distributors to enter into an agreement with the SME (the "Agreement") upon being requested to do so, in a form approved by the Board.

In its September 4, 2007 application for the SME licence, the Applicant stated that the Agreement was under development and was likely to be submitted to the Board by the end of September 2007.

On September 14, 2007, the Board issued its Notice of Application and an interim order granting the IESO a temporary SME licence. The temporary SME licence was set to terminate on January 31, 2008 or the date of the Board's final decision in the SME licence application, whichever was earlier.

The following parties requested and were granted intervenor status in this proceeding: Ontario Energy Savings L.P. (now, Just Energy Ontario L.P.), Hydro One Networks Inc., Coalition of Large Distributors, Electricity Distributors Association ("EDA") and Direct Energy Marketing Limited.

In order to have a more efficient review of the licence application, the Board had decided not to proceed with the licence application until the SME filed the Agreement with the Board. To that end, the Board has been extending the term of the temporary SME licence to allow the IESO to spend time on the development of the Agreement and address governance issues.

### **Recent Procedural Steps and Submissions**

On September 24, 2010, the IESO requested a further extension to the term of the temporary licence until the earlier of December 31, 2011 or the Board's final decision on the SME licence application. This request provided limited details on why a further extension was required.

On September 29, 2010, by way of an interim decision and order, the Board granted an extension to the term of the temporary SME licence until March 31, 2011 or the date of the Board's final decision in the SME licence application, whichever was earlier. In that interim decision and order, the Board stated that it did not believe that the Applicant had demonstrated the need for the requested term of the extension.

On November 15, 2010, the Board issued Procedural Order No. 1 in which it ordered the IESO to file with the Board the Agreement and any other additional evidence pertaining to the SME licence or, if the IESO was unable to file the requested information, to file a written submission providing a detailed rationale for its inability to file such information.

On November 30, 2010, the IESO filed a written submission with the Board in accordance with Procedural Order No. 1. In its submission, the IESO stated that in September 2010, it signed a Memorandum of Understanding with the EDA around SME governance. According to the IESO, the MOU incorporates a transition plan that provides for LDC representation in MDM/R governance during the Smart Meter Implementation Plan ("SMIP") and a structure to transition the SME role to LDC control once the SMIP is complete. The IESO further stated that "the transition of the SME function to LDC control is subject to government concurrence and cannot occur until the provincial government issues a regulation naming the new entity as SME."

The IESO submitted that it would be inefficient to proceed with the application for a permanent SME licence at this time given the fundamental changes in the structure of the SME that are anticipated to occur.

The Board issued Procedural Order No. 2 on December 10, 2010. In Procedural Order No. 2, the Board noted the fact that the IESO is the only entity designated by regulation to be the SME and that it requires a licence to exercise its powers or perform its duties. The Board also stated that it understood that changes in the structure of the SME may occur in the future and that the IESO may not be in a position to file the Agreement with the Board for approval at this time.

In view of these circumstances and in the interest of efficiency in terms of the licence application process itself, the Board decided to depart from its previous position to wait for the Agreement to be filed before proceeding with the licence application. The Board decided to proceed with the licence application and to limit the scope of the licence application proceeding solely to issues relating to the SME licence application under its current structure. The Board indicated that it would not consider any issues relating to the anticipated SME governance structure or the Agreement in this proceeding.

The Board gave parties an opportunity to provide written submissions on the licence application, including submissions on the appropriate term of the licence. No party filed

a submission. The IESO, therefore, did not file a reply submission. However, the IESO did file a letter with the Board dated January 21, 2011 in which it stated that it thought the appropriate term of the licence should be December 31, 2012. The IESO stated that this would "allow the IESO to implement the transitional arrangements detailed in [its] letter of November 30, 2010 (expected by the end of 2011) and provide additional time during which the permanent SME can seek a licence and any other regulatory approvals necessary to carry out its functions."

### **Board Findings**

The Board has decided that it is in the public interest to grant the IESO the SME licence. The term of the licence will be for a five year period.

The Board has decided that a five year licence is appropriate under the circumstances. The December 31, 2012 date is based on an estimate of the time it will take for future developments with respect to the anticipated SME identity. The IESO has stated that these developments are ultimately beyond its control and will be subject to government concurrence. The Board has stated in this proceeding that it is best to avoid the type of future periodic considerations of the interim licence renewal which in the past have been triggered by expiration dates which have proven to be of no consequence. The Board believes that the next hearing on an SME licence should be triggered by actual events when they occur.

If a new entity becomes designated as the SME before the five year term expires, that new entity may apply for a licence at that time. If the current SME will no longer be an SME, the current SME could request to have its licence cancelled as per section 77(5) of the Act. The Board finds that no negative consequences will result from granting the IESO the SME licence for a five year term. The five year term will reduce the potential need for an extension or renewal of the licence should the timetable identified by the Applicant be altered or delayed.

### **IT IS THEREFORE ORDERED THAT:**

The application for the Smart Metering Entity licence is granted, on such conditions as are contained in the attached licence.

ISSUED at Toronto, January 27, 2011

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary