

***PUBLIC INTEREST ADVOCACY CENTRE***

***LE CENTRE POUR LA DEFENSE DE L’INTERET PUBLIC***

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Michael Janigan

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July 04, 2012

**VIA MAIL and E-MAIL**

Ms. Kirsten Walli

Board Secretary

Ontario Energy Board

P.O. Box 2319

2300 Yonge St.

Toronto, ON

M4P 1E4

Dear Ms. Walli:

**Re: Independent Electricity System Operator (“IESO”), in its capacity as**

**Smart Metering Entity (“SME”)**

**Determination of Smart Metering Charge (“SMC”)**

**Board File No. EB-2012-0100**

**Determination of Appropriate Allocation and Recovery of SMC**

**Board File No. EB-2012-0211**

As requested in Procedural Order #1 for the above combined proceeding, set out below are VECC’s submissions with respect to the Preliminary Issue identified by the Board.

VECC has reviewed the June 29th submissions by Board Staff and is in general support of the positions taken therein. In particular, VECC notes and agrees with the following points made by Board Staff:

* *At its most basic then, it is Board staff’s view that the scope of the Board’s approval in respect of the form of agreement to be entered into by the SME and the Distributor is restricted to those parts of any agreement that are related to the consideration of the roles and responsibilities of each of the signatories and only in relation to metering and the information required to be exchanged to allow for the conduct of the respective roles and responsibilities* (page 8). VECC also agrees with Staff’s subsequent observations that while Distributors may choose to enter into further agreements with the SME they are not required to do so in order to obtain the services of the SME with respect to the provision of TOU billing data, including validation, estimating and editing services.
* *In Board staff’s view, in addition to being guided by the relevant statutory provisions and using the actual words provided by section 5.4.1 of the DSC and section 3.2 of the SME licence, which are arguably the best and most relevant guidance the Board has with respect to its mandate, the Board must be guided by the nature of the relationship between the contracting parties and by the Board’s statutory objectives* (page 10). With respect to this relationship, in VECC’s view, what is of particular importance is the fact that Distributors are required to enter into an agreement with the SME and, while developed in consultation with Distributors, the Agreement has been produced by the SME. As result, it is critical that the OEB assess the reasonableness of the Agreement in terms of the role and responsibilities it assigns to Distributors. Also, of import in this regard, are whether the governance structures established by the Agreement (e.g. the SME Steering Committee and the Dispute Resolution Process) are appropriate and effective.
* *In Board staff’s view, a subset of the consideration of the Board’s scope of approval in respect of the form of agreement between the SME and the Distributor must necessarily entail a consideration of protecting the consumer as both an end-user of the infrastructure and services of the MDM/R and as a ratepayer in respect of such infrastructure and services* (page 12). Since it is consumers (as ratepayers) who will ultimately pay the costs associated with the SME and Distributors fulfilling their respective obligations under the Agreement VECC views it as critical that the scope of the Board’s approval consider the cost implications associated with the parties to the Agreement fulfilling their obligations as established under the Agreement. For greater clarity, the issue here is the extent to which the cost implications flowing from the roles and responsibilities as defined by the Agreement are reasonable while recognizing the overall objectives of the Agreement. Similarly, the scope of the Board’s approval should consider the anticipated costs of implementing and managing the governance structures proposed by the Agreement (e.g. the SME Steering Committee and the Dispute Resolution Process) when assessing their appropriateness.
* *Board staff is of the view that the Board’s scope of approval includes the ability to revise the terms in the form of agreement, provided again that such terms are related to the roles and responsibilities of the SME and Distributors in relation to metering and the information required to be exchanged to allow for the conduct of the respective roles and responsibilities. In the same vein, Board staff is of the view that the Board should include provisions which clearly outline procedures to be followed for any future amendments of the form of agreement. In particular the Board must determine whether and to what extent any such amendments – depending on the purpose of the amendment, the provision being amended or the level of detail involved – will be required to be put before the Board for subsequent approval* (page 14). VECC notes that the form of the Agreement as proposed by the IESO/SME is rather unique in that the substantive details regarding the roles and responsibilities of both the SME and Distributors will not be contained in the Agreement but rather in the Terms of Service document and supporting Manuals – neither of which will be subject to Board approval. Although provision is made for disputes/disagreements regarding the related Terms of Service/Manuals are subject (after good faith negotiation) to settlement by the Board. In VECC’s view, the scope of the Board’s approval must also consider whether this proposed approach is appropriate and, if so, whether an reasonable balance has been achieved a regarding the matters addressed in the proposed Agreement versus those left to be “fleshed-out” in the Terms of Service and related Manuals.

Yours truly,



Michael Janigan

Counsel for VECC

cc IESO

Intervenors