

IN THE MATTER OF subsections 74 and 78(2.1), (3.0.1), (3.0.2) and (3.0.3) of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF subsection 53.8(8) of the *Electricity Act, 1998*;

AND IN THE MATTER OF Ontario Regulation 453/06 made under the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an Application by the Independent Electricity System Operator, designated as the Smart Metering Entity, for an Order approving fees for access to data by third parties

ARGUMENT-IN-CHIEF

PART I - INTRODUCTION

1. 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 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.

PART II - ANALYSIS

A. The Proposed Amendments to the SME's Licence

2. 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.

3. 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.

4. 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.

B. The Legal Test

5. This application is being made 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**”).

6. The licence amendment is being sought pursuant to section 74. Subsection 74(1) of the OEB Act grants the Board the power to, on the application of any person, amend a licence if it considers the amendment to be in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998* (the “**Electricity Act**”).

7. The Board’s objectives related to electricity are contained in subsection 1(1) of the OEB Act and include “[t]o facilitate the implementation of a smart grid in Ontario.”

8. The relevant purposes of the Electricity Act can be inferred from Part IV.2 of the Act, which provides for the designation of the SME. Section 53.8 of the Electricity Act establishes the objects of the SME, which includes the provision and promotion of non-discriminatory TPA on appropriate terms and subject to any conditions in its licence relating to the protection of privacy:

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.

9. By virtue of subsection 78(2.1) of the OEB Act, the SME is not permitted to charge for meeting its obligations under Part IV.2 of the Electricity Act except in accordance with an order of the Board.

10. Approval to charge market prices for TPA is being sought under subsection 78(3.0.1) of the OEB Act, which allows the Board to make orders “approving or fixing just and reasonable rates” in order for the SME to meet its obligations under the OEB Act or under Part IV.2 of the Electricity Act. Subsections 78(3.0.2) and (3.0.3) allow the Board to make orders relating to deferral or variance accounts and the recovery of smart metering initiative costs.

C. Development of TPA Methodology through Stakeholder Consultation

11. The SME has undertaken extensive stakeholder consultation on the methodology to provide TPA to the data and keep the data secure. These consultations informed the SME's proposed approach to granting access to the data, as outlined in this application, and provided notice to stakeholders of the SME's intentions.

12. The SME began work on how to collect the data in early 2016 by establishing a representative province-wide working group of local distribution companies (“LDCs”) to assist it. The methodologies to collect the additional data as per the OEB’s January 26, 2016 Decision and Order in EB-2015-0297 (the “**January 2016 Order**”) were established through extensive stakeholdering throughout 2016 with collection commencing in January 2017.¹ The SME then began work on developing the methodologies for providing TPA by establishing the Data Strategy Advisory Committee (“**DSAC**”) in early 2017.

13. Since early 2016 the SME made multiple presentations at and received input from the IESO’s Stakeholder Advisory Committee (“**SAC**”) on developments in fulfilling the OEB requirements to collect the data and on providing TPA. The SAC has

¹ Collection from Toronto Hydro began in October 2017.

representatives from a variety of stakeholders including LDC representatives and a consumer representative.

D. The Market and Charging for Access to the Data

14. The SME retained external advisors to provide appropriate guidance and understanding of this market. In 2018 the SME hired two consultancies to assist it and the DSAC to understand the potential markets that exist for the data. The concept of charging above cost for TPA, with the net-revenues generated being for the benefit of the Smart Meter Charge ratepayers, was discussed at and evolved based on the input of the DSAC and was also presented for discussion at two SAC meetings in 2018.

15. Multiple pilots were conducted in 2018 to test the processes, policies, and procedures to provide TPA and understand the value proposition of the data request based on “real-life” examples in a controlled, transparent, and representative environment.

16. Through the stakeholder consultations and the pilot test cases, it was realized that many requests for access would be unique and to effectively explore the market the SME would require the ability to develop and respond with a market price to these requests.

E. The Need for Data Use Agreements

17. Through the pilots it was also recognized that a single templated DUA could not realistically be used for all parties requesting access to the data. It was recognized that the SME would require the ability to develop and respond with a DUA appropriate to the both the requestor and data requested.

F. The OEB has decided that the SME shall collect certain data and provide it to Third Parties

18. In the January 2016 Order the OEB renewed the SME’s licence to December 31, 2016 and required the SME to collect certain data in addition to the consumption data which the SME has historically collected for each installed smart meter. The January 2016 Order also required the SME to prepare and file an implementation plan to provide

access to the data to third parties in its next licence renewal application, which would need to be filed prior to yearend 2016.

19. In September 2016 the SME filed an application to renew its licence, EB-2016-0284, which included an implementation plan for providing TPA. The OEB approved this application, renewing the SME's licence for the requested five years and stating "The OEB is overall satisfied with the SME's implementation plan."

G. The SME is Providing De-identified Information

20. The SME has been collecting the data that will be provided to third-parties since January 1, 2017. The SME is not collecting personal data. The SME abides by the *Freedom of Information and Protection of Privacy Act* ("FIPPA") and follows the privacy guidance provided by the Information and Privacy Commissioner of Ontario.

H. Innovation and Value for Ratepayers

21. One of the key objectives in the OEB's Strategic Blueprint was: "Working with LDCs and other agencies and market participants to identify and understand emerging new energy-related "value streams" and service models."²

22. This application is the result of the January 2016 Order and stakeholdering since that decision which has resulted in an innovative application which seeks to create a new value stream to benefit ratepayers.

23. This application meets the requirements of the January 2016 Order and the spirit of the OEB's Strategic Blueprint and recent work on innovation for regulated entities.

PART III - CONCLUSION

24. The SME believes the evidence filed this proceeding through its application and responses to interrogatories is sufficient and on this basis the application should be approved.

² OEB STRATEGIC BLUEPRINT: Keeping Pace With an Evolving Energy Sector, 2017-2022, pg 14. Printed February 15, 2018.

25. The licence amendments sought by the SME are for the purposes of implementing TPA, a statutory object of the SME, and should be approved under subsection 74(1) of the OEB Act.

26. SME's proposal to charge a market price for TPA is based on the stakeholding work and pilots the SME has conducted. The proposal will benefit ratepayers and should be approved under subsection 78(3.0.1) of the OEB Act.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of April, 2019.



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