

**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

## **REPLY SUBMISSION**

### **PART I - INTRODUCTION**

1. This is the SME's reply submission in its application for an order and a licence amendment to allow it to charge market prices for access to certain data for the benefit of smart meter charge ratepayers.

2. As detailed below, many of the arguments made by the intervenors do not pertain to the relief being sought by the SME in this application, but rather to whether the SME should be providing third party access ("TPA") at all. In this regard, the SME agrees with the statement of OEB staff in their submission that "the SME is required to provide access "by the terms of the Electricity Act, 1998 and its licence"<sup>1</sup>. This application is not about whether the SME should make electricity consumption and use data available to third parties, how TPA can be provided in a manner that is consistent with the SME's statutory objectives, ensures the security of consumers' information and maximizes the benefit to smart metering charge ratepayers.

3. The SME recognizes that this application is both innovative and creative in what it is seeking. The novelty of this application is not a reason to deny the relief sought. The SME believes the application, if approved, will allow it to create a new value stream for its ratepayers while maintaining security of the non-personal data held by the SME.

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<sup>1</sup> Pg 3: 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

## PART II - ANALYSIS

### **A. Is the SME's proposal that access should be provided at market prices appropriate?**

4. In their submission, OEB staff stated their support for the SME's proposal that the information, at a high level of aggregation, be publicly available without charge on the SME's website but questioned the need for and form of terms and conditions on this access as this may be a barrier to access.

5. The SME wishes to reiterate that the public offerings will be provided at no charge and access will be granted to any party that agrees to the terms of access. The terms of access and the method of agreeing to them will be similar to the terms and conditions found on many other publicly accessible webpages (including the webpage of the Ontario Energy Board).<sup>2</sup> The purpose of having terms on access to the public offerings is to outline the terms and conditions upon which the data can be used, in order to ensure appropriate use of the webpages and to safeguard the data therein.

6. The OEB staff suggested that the SME should consider providing access to entities with not-for-profit status on a cost recovery basis. The SME has considered and agrees with this suggestion and will provide access to entities with not-for-profit status on a cost recovery basis.

7. For the other offerings which the SME has proposed to offer at market prices, the SME notes that OEB staff supports the SME's proposal while other parties oppose it, albeit for different reasons.

8. VECC and BOMA submit that the SME should be subject to price regulation because it will be a monopoly provider. This erroneous assertion is premised on a narrowly defined market that includes only smart metering data for Ontario consumers; therefore, using this particular definition, the SME can be the only service provider. However, the provision of smart metering data must be viewed in the larger context of

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<sup>2</sup> <https://www.oeb.ca/legal-privacy-statements>

the market for big data in which there are numerous alternatives and substitutes. As the SME stated in its evidence<sup>3</sup>, 'Electricity consumption data as provided by the SME will be an emerging, and therefore small, segment in the overall big data market'.

9. VECC and BOMA have not provided evidence that the Local Distribution Companies ("LDCs"), who have access to the same data for smart meter customers in their service territories, are not willing or able to provide or sell the data to third parties. A rational, profit maximizing LDC, would find ways to sell its data if it was profitable to do so based on market prices.

10. In its submission, VECC noted that the SME has identified LDC's as one of the potential buyers of its data and, apparently based on this, states that the LDC's are not a competitor of the SME and therefore the SME would be a monopoly provider of the data. While VECC did not provide a reference for this it appears to be in the SME's response to BOMA Interrogatory 7 which stated:

The SME is aware of an interest in access to reliable electricity consumption information among parties including, but not limited to, local distribution companies, retailers of energy related and other products, researchers, and various levels of government.

11. The SME based its statement about LDCs as potential customers on inquiries from some LDCs for or about the data of other LDCs. The SME will not charge LDCs for normal access to data from their customers as currently occurs. The SME will charge an LDC if it seeks access to the data of another LDC, where an LDC is a third party to that data. Also, no evidence has been presented that LDCs will not be able to provide similar or the same data the SME will provide, the only difference being that the SME can provide access to data within one or more postal codes while an LDC may be able to provide access to the data within their service territory.

12. BOMA further submitted that "..., there is currently no real market for smart meter data in Ontario."<sup>4</sup> The SME acknowledges that at this time smart metering data is

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<sup>3</sup> BOMA IRR #7



not available for access but this does not mean there is not market demand for the data. The work done by the SME in preparing for TPA to the data has shown that there is market demand for the data. The price sensitivity of that demand is currently unknown. For this reason, the SME is seeking flexibility to provide access to the data at a charge that will maximize the benefit for smart metering charge ratepayers.

13. The EDA submitted that this application should be denied as it does not satisfy the requirements of section 29 of the *Ontario Energy Board Act, 1998* (the “**OEB Act**”), under which the OEB may choose to refrain from exercising power. However, this application was not made under section 29 of the OEB Act and the SME is not seeking forbearance from regulation in the provision of TPA at market rates; it is seeking an order and licence amendment to allow it to charge market prices for TPA. Importantly, the SME will remain subject to OEB regulation and will be reporting its net revenues on an annual basis. The SME is seeking a similar approach to that adopted by the OEB in its wireless attachments decision, in which the OEB did not forbear from regulating the service but amended the LDC’s licences to allow them to provide a service at market rates.<sup>5</sup>

14. The intervenors also overlook that price regulation would foreclose one of the OEB's objectives of TPA, namely "developing new innovative products and services that will enhance customer choice and control". A regulated price would send the wrong signal and deter innovation. The greater risk is not monopoly pricing, but regulated pricing that deters innovation.

15. In summary, the SME’s proposal is for an order and licence amendment to enable it to provide access to the data at market prices for the benefit of smart metering charge ratepayers that complies with the requirements of the *Electricity Act, 1998*, the OEB Act and the direction of the OEB.

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<sup>4</sup> BOMA May 3, 2019 submission, pg 7

<sup>5</sup> EB-2013-0234, Oral Decision, May 16, 2014

**B. 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?**

16. OEB staff submitted they do not have concerns with the proposed terms of access principles and Data Use Agreement ("DUA") framework and BOMA has agreed that access to the data should only be provided to a person who meets the criteria for- access established by the SME and enters into a DUA with the SME.

17. CCC submitted that the OEB should mandate a standard set of terms and conditions for use in developing the DUA. VECC has submitted that there should be a standard form of DUA approved by the OEB.

18. In its decision approving the final Issues List and Issue 2 in particular the OEB stated the following:

The OEB appreciates that the SME requests flexibility in terms of the data use agreements executed with parties. It is therefore not necessary in this proceeding to review the exact wording of every agreement the SME contemplates offering. However, the OEB notes that the SME has described, at a high level, certain standard terms and conditions that would be included in all agreements.

Questions about whether the proposed standard terms and conditions are adequate are in scope. The OEB considers that draft issue 2 is sufficient to provide for that line of inquiry. (Emphasis added)

19. Neither CCC nor VECC appear to have understood the OEB's clarifications of Issue 2 provided in the decision on the final Issues List or attempted to address this in their submissions. In its application and interrogatory responses, the SME explained why it needs to use an individual DUA with third parties seeking to access the data. The SME also set out the proposed principles for the terms of access and that the terms of access principles, combined with an individual DUA, will allow the SME to manage access to the data by third parties while maximizing the security of the data. These parties have not provided sound reasons or evidence supporting the need for a standardized DUA.

**C. Is the SME's licence amendment proposal appropriate?**

20. OEB Staff and the EDA were the only parties which made submissions on the proposed wording of the licence amendment provided by the SME.

21. The SME does not believe that the concerns raised by the EDA with respect to "the appropriate level and form of data protection" are useful or relevant. As described in the evidence, interrogatory responses filed and under Issue 10 the SME is meeting the level of data protection described by the Information and Privacy Commissioner of Ontario (the "IPC") in its *De-identification Guidelines for Structured Data*.

22. The SME believes that a licence amendment is the most appropriate method to allow it provide TPA at market prices and supports the edits suggested by OEB staff in their submission.

**D. 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?**

23. OEB staff were the only party that submitted on this Issue and are supportive of the SME's proposals and methodology for calculating net revenues generated by TPA and the proposed allocations of those revenues to Smart Metering Entity Charge rate payers as appropriate.

24. The SME continues to believe this previously approved method, which allows for the automatic allocation of funds to smart meter charge ratepayers when the Balancing Variance Account (the "BVA") exceeds a balance of \$2.5 million and certain other criteria are met, is appropriate and suitable.

**E. 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?**

25. OEB staff and VECC were the only parties to make submissions on this issue and were supportive of the SME's proposal for a new variance account, a sub-account of the already approved BVA, to track the net revenues generated by TPA as appropriate.



26. The SME continues to believe the establishment of the Benefits Account as a sub account of the BVA to track the net revenues generated by TPA is appropriate.

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

27. OEB staff and VECC were the only parties to make submissions on this issue and were supportive of the SME's proposal that the Benefits Account be a sub account of the BVA.

28. The SME continues to believe the establishment of the Benefits Account be a sub account of the BVA is an appropriate and effective method to track the revenues generated by TPA.

**G. 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?**

29. BOMA and OEB staff were the only parties which made submissions on this issue and both supported an annual filing with greater detail than was originally proposed by the SME. The SME agrees that this is reasonable and proposes to include the following information in the annual report in addition to the net revenues:

- gross revenues;
- costs of providing TPA for a charge; and
- the total number of parties that have accessed the data.

30. The SME does not believe it is appropriate, necessary or useful for it to make public the parties gaining access to the data. Such a requirement could deter some parties from accessing the data, thereby reducing the potential revenues which can be generated for the benefit of smart meter charge ratepayers.

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

31. While OEB staff submitted that they have no concerns with the stakeholdering efforts the SME undertook, BOMA and VECC submitted that the SME's efforts were not adequate. The SME does not agree with BOMA and VECC's submissions on this issue.

32. As described in the application and responses to interrogatories the SME stakeholdered the proposal to provide TPA at market prices through the DSAC, the IESO's Stakeholder Advisory Committee (the "SAC") and a public webinar. Though its efforts the SME worked with and stakeholdered the concept of TPA at market prices with a variety of parties that represent a variety of interests, including smart meter customers, and through multiple venues.

33. Stakeholdering and work to allow to the collection of this data in a non-personal and deidentified manner began in early 2016 with collection commencing on January 1, 2017. Stakeholdering and work on providing TPA to the data began in early 2017, and this evolved to include the concept to providing access at market prices. The SME actively sought the involvement of a variety of interested parties and stakeholders, including issuing a request for nominations to the DSAC prior to its formation in early 2017. Additionally, the SME hired consultants to assist it and the DSAC in understanding the relevant issues, including but not limited to maintaining the security of the data while providing access and the practices of other entities providing access to data and how to address these. To gain experience and also inform the DSAC the SME ran multiple pilots, providing access to a variety of parties and requiring that they sign DUA's prior to having access. This application was developed from this work, stakeholdering and the contribution of time and expertise by multiple people, including the members of the DSAC, the IESO's SAC and the people that participated in the two public webinars held by the SME.

34. Contrary to BOMA's assertions that there was no consumer representation, both the OEB and Ministry of Energy were observers of and participated at the DSAC



meetings and in forming the DSAC the SME sent out a public call for nominations stating they were seeking representation within 5 sectors, including electricity consumers<sup>6</sup>. No consumer representatives responded to the request. Additionally, there is a consumer representative from Consumers Council of Canada (“CCC”) on the IESO’s SAC.

**I. 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?**

35. OEB staff were the only party to make a submission on this issue and stated that it is critical that the SME work to ensure that TPA revenues are sufficient to cover related expenses. They further submitted that as the SME has proposed that access to the data will only be provided to third parties for a price that achieves full cost recovery the SME should not be in position where it fails to recover its costs.

36. The SME understands and appreciates the concerns raised by OEB staff and as that there is no intention to deviate from the proposal to provide access to third parties at a price that at least achieves full cost recovery believes this is not an issue of concern.

**J. 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?**

37. While OEB staff and VECC submitted that the SME has approached the privacy issue with appropriate care, VECC and other parties submitted they continue to have concerns with respect to the risk of re-identification. The EDA submitted that:

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<sup>6</sup> BOMA IRR #17

...as the risk of reidentification is not zero... the Board should require the SME to address the available techniques that would either eliminate or reduce this risk and that without such evidence, the OEB cannot find the SME's proposed licence amendment appropriate.<sup>7</sup>

38. The evidence shows the SME has taken all reasonable steps to minimize the potential for re-identification of the non-personal data that it collects and that the concerns of the parties, including the EDA, have been effectively addressed. The SME recognizes that the risk of re-identification is not zero and in preparing to provide access will fully meet the requirements set out in the Information Privacy Commissioner's *De-identification Guidelines for Structured Data*<sup>8</sup> and which state the following on page 13:

When translating between the (qualitative) invasion of privacy value and the (quantitative) re-identification risk threshold, consider a key aspect of de-identification—namely, that deidentification does not produce data sets for which there is zero probability of re-identification.

Rather, it results in data sets for which the probability of re-identification is *very low*, given the level of re-identification risk involved in the release. The amount of de-identification proportionate to the invasion of privacy value should be equal to a very low probability of reidentification given that level of risk. (emphasis added).

39. Prior to providing access to the data to any party the SME will assess the proposed use case and, as appropriate, will work with its privacy consultant to mitigate the risks by, for example, increasing the level of aggregation of data provided.

40. While BOMA submitted that it supports the establishment of the Ethics Review Committee (the “**Committee**”) it has suggested the Committee have a different makeup of members than was proposed by the SME. OEB staff submitted that they are supportive of the SME's proposal for the Committee and that it would be desirable to have the Committee established prior to the SME entering into any TPA agreement.

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<sup>7</sup> EB-2018-0316 Electricity Distributors Association Submission to SME Page 2 of 6 Filed: May 3rd, 2019

<sup>8</sup> This document was provided in EDA IRR #20

41. The SME believes the Committee, as described by the SME in its evidence, will be an important, effective and additional tool to assist the SME in providing TPA in a manner that complies with the principles it has proposed for access and believes the structure of the Committee it has proposed is appropriate and, as stated in the evidence, may change the composition of the committee as its decision making matures. The SME agrees with OEB staff and will establish the Committee prior to entering into any TPA agreements.

**K. 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?**

42. OEB staff submitted that the objective of providing TPA to consumption data was previously determined by the OEB and to facilitate an assessment of the SME's performance against this objective proposed that the SME annually report on the number of individual entities who have purchased data under a custom or standard offering.

43. 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 and that 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. OEB staff submitted that as the SME's current licence expires on December 31, 2021 that the SME's application to renew the licence beyond that date would provide the OEB with an opportunity to review the TPA initiative and, if necessary, to adjust the applicable licence conditions.

44. The SME agrees with OEB staff that the one of the objectives of providing TPA to the data was previously determined by the OEB and includes:



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”.<sup>9</sup>

45. Staff further suggested that to facilitate an assessment of the SME’s performance against this objective the SME annually report on the number of individual entities who have purchased data under a custom or standard offering. The SME agrees that annually reporting on the number of individual entities who have purchased access to the data is reasonable and will include this information in its annual report which is filed with the OEB by May 31<sup>st</sup> each year.

46. OEB staff suggested that the SME’s proposal to monetize the data in order to create a new value stream to the benefit of ratepayers is another objective and the SME is in agreement with this. The SME also agrees that reporting on the costs and revenues generated by TPA is reasonable and will include this information in its annual report which is filed with the OEB by May 31<sup>st</sup> each year.

47. The SME understand OEB staff’s proposal that a future application before the OEB would provide an opportunity for the OEB to review the TPA initiative but believes that the next licence renewal application will not allow enough time for the SME to have gained experience nor will it necessarily provide an adequate record to evaluate the initiative.

48. As the current Smart Meter Charge is in effect until December 31, 2022 the SME submits that a more appropriate opportunity to review the initiative would be in the next Smart Meter Charge application. As applications are filed around nine months prior to the expiry date the licence renewal application will need to be filed no later than March 2021, which will be approximately one and half years after the decision on this application is expected to be issued and the SME will have filed only one annual report which will include the costs and revenues associated with this initiative. Reviewing the TPA initiative in the next Smart Meter Charge application, which will need to be filed

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<sup>9</sup> OEB Staff submission, page 13

by March 2022, will allow the SME to gain greater experience in providing access and two annual reports, which include the costs and revenues associated with TPA, will have been filed with the OEB.

### **PART III - CONCLUSION**

49. The SME fundamentally disagrees with the submissions of some parties that the OEB should review and approve both the pricing for TPA and the DUA parties will be required to sign to access the data. To do so would foreclose one of the OEB's objectives of TPA as summarized by OEB Staff in their submission – developing new innovative products and services that will enhance customer choice and control.

50. If the OEB sets the TPA pricing (even within a band as suggested by VECC) and fixes the terms and conditions within the DUA, it will reduce the ability of the SME to respond to individual and unique requests for access. This in turn could result in reduced or limited access to the data by third parties, deter innovation and may result in less revenue being generated than would otherwise occur.

51. The SME believes that its application seeking an order and a licence amendment to allow it to provide TPA at market prices with the changes in the licence amendment wording and reporting as described by the SME in this submission represent an innovative opportunity to benefit SME ratepayers, parties interested in access to the non-personal data collected and held by the SME and meet the objectives of providing TPA.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17th day of May, 2019.



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