

**Independent Electricity System Operator,  
in its capacity as the Smart Metering Entity**

**Application to provide access to de-identified electricity  
consumption data to third parties that are Canadian Governmental Entities**

**Settlement Proposal**

**EB-2021-0292**

**February 15, 2022**

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## A. PREAMBLE

This Settlement Proposal is filed with the Ontario Energy Board (“**OEB**”) in connection with the Application by the Independent Electricity System Operator (“**IESO**”), designated as the Smart Metering Entity (“**SME**”), to provide access to de-identified electricity consumption data to third parties that are Canadian Governmental Entities as defined in the Application.

In Procedural Order No. 1, dated December 13, 2021, the OEB established a streamlined process to address the Application, by way of an early Settlement Conference that would provide the parties with an opportunity to clarify matters related to the SME’s evidence and develop an issues list. This proposed settlement agreement provides sufficient detail in support of any settled issues as required by Procedural Order No. 1. Where there is clarification to the evidence the changes have been included providing a direct link between each settled issue and the supporting evidence.

A Settlement Conference was held virtually on January 17, 18, and 20, 2022. Andrew Mandyam and Brandon Ott of Utilis Consulting acted as facilitators for the Settlement Conference. This Settlement Proposal arises from the Settlement Conference.

The SME and the following intervenors, as well as OEB technical staff (“**OEB Staff**”), participated in the Settlement Conference:

- Building Owners and Managers Association Toronto (“**BOMA**”)
- Consumers Council of Canada (“**CCC**”)
- Electricity Distributors Association (“**EDA**”)
- Energy Probe Research Foundation (“**Energy Probe**”)
- Ontario Sustainable Energy Association (“**OSEA**”)
- Vulnerable Energy Consumers Coalition (“**VECC**”)

The Settlement Proposal deals with the relief sought in this proceeding. As set out in more detail below, a full settlement has been reached on all issues.

The SME and all intervenors listed above have agreed to the settlement described on the following pages. Any reference to “**Parties**” in this Settlement Proposal is intended to refer to the SME and the intervenors listed above.

All Parties participated virtually in the Settlement Conference and subsequent discussions. OEB Staff is not a party to the Settlement Proposal. After the Settlement Proposal is filed, OEB Staff will file a submission on the Settlement Proposal. Also, as noted in the OEB’s *Practice Direction on Settlement Conferences*, OEB Staff who participated in the Settlement Conference are bound by the same confidentiality and privilege rules that apply to the Parties to the proceeding.

This document is called a “Settlement Proposal” because it is a proposal by the Parties to the OEB to settle the issues in this proceeding. It is termed a proposal as between the Parties and the OEB. However, as between the Parties, and subject only to the OEB’s approval of this Settlement Proposal, this document is intended to be a legal agreement, creating mutual obligations, and binding and enforceable in accordance with its terms. As set forth below, this Settlement Proposal is subject to a condition subsequent, that if it is not accepted by the OEB in its entirety, then unless amended by the Parties, it is null and void and of no further effect. In entering into this agreement, the Parties understand

and agree that, pursuant to the *Ontario Energy Board Act, 1998*, the OEB has exclusive jurisdiction with respect to the interpretation or enforcement of the terms hereof.

Best efforts have been made to identify all the evidence that relates to each settled issue. The supporting evidence for each settled issue is identified individually by reference to its exhibit number in an abbreviated format; for example, Exhibit B, Tab 3, Schedule 1 is referred to as B-3-1. The identification and listing of the evidence that relates to each settled issue is provided to assist the OEB. The Settlement Proposal describes the agreements reached on the issues list and the settled issues. The Settlement Proposal provides a direct link between each settled issue and the supporting evidence in the record to date.

In this regard, the Parties are of the view that the evidence provided, as supplemented by the information contained in and appended to this Settlement Proposal, is sufficient to support the Settlement Proposal in relation to the settled issues and, moreover, that the quality and detail of the supporting evidence, together with the corresponding rationale, will allow the OEB to make findings agreeing with the proposed resolution of the settled issues. If the OEB does not accept the proposed settlement of any issue, then subject to the Parties' agreement on non-severability set out in the final paragraph below, further evidence may be required on the issue for the OEB to consider it fully.

None of the Parties can withdraw from the Settlement Proposal except in accordance with Rule 30 of the OEB's *Rules of Practice and Procedure*. Further, unless stated otherwise, a settlement of any particular issue in this proceeding is without prejudice to the positions Parties might take with respect to the same issue in future proceedings.

The Parties acknowledge that the Settlement Conference (including subsequent related discussions) is confidential in accordance with the OEB's Practice Direction on Settlement Conferences. The Parties understand that confidentiality in that context does not have the same meaning as confidentiality in the OEB's *Practice Direction on Confidential Filings*, and the rules of that latter document do not apply. Instead, in the Settlement Conference, and in this Settlement Proposal, the Parties have interpreted "confidential" to mean that the documents and other information provided during the course of the Settlement Conference, the discussion of each issue, the offers and counteroffers, and the negotiations leading to the settlement of each issue during the Settlement Conference are strictly privileged and without prejudice. None of the foregoing is admissible as evidence in this proceeding, or otherwise, with one exception, the need to resolve a subsequent dispute over the interpretation of any provision of this Settlement Proposal.

Further, the Parties shall not disclose those documents or other information to persons who were not attendees at the Settlement Conference. The Parties agree that "attendees" is deemed to include, in this context, persons who were not virtually in attendance at the Settlement Conference but were: a) any persons or entities that the Parties engage to assist them with the Settlement Conference, and b) any persons or entities from whom they seek instructions with respect to the negotiations; in each case provided that any such persons or entities have agreed to be bound by the same confidentiality provisions. It is fundamental to the agreement of the Parties that none of the provisions of this Settlement Proposal are severable. If the OEB does not, prior to the commencement of the hearing of the evidence in this proceeding, accept the provisions of the Settlement Proposal in their entirety, there is no Settlement Proposal (unless the Parties agree that any portion of the Settlement Proposal that the OEB does accept may continue as a valid Settlement Proposal).

## **B. OVERVIEW**

The Parties have reached a package settlement of issues in this proceeding (the "**Package Settlement**").

The Package Settlement includes agreement on an Issues List and acceptance of the SME'S proposals in respect of all issues.

### **C. THE ISSUES LIST**

In accordance with Procedural Order No. 1 and as part of the Package Settlement, the Parties have developed and agreed upon the following issues list for this proceeding:

1. Is the proposal that access only be provided to those listed, the “Canadian Governmental Entities” as defined in Ex B-6-5 Defined Terms & Acronyms appropriate?
2. Is the SME’s proposal to de-identify data shared with Canadian Governmental Entities appropriate?
3. Is the proposal that the costs for providing access for standard requests should be recovered through the Smart Meter Charge appropriate?
4. Is the proposal that, for non-standard requests, access should be provided at cost and charged to the requestor appropriate? Is the proposed rate of \$145 per hour appropriate?
5. What is the appropriate accounting treatment of costs and revenues from third party access?
6. Are the basic terms of the Data Use Agreement appropriate?
7. Does the application sufficiently respond to prior Board direction in EB-2018-0316? Specifically:
  - The application should summarize the SME’s consultation with consumers including what it heard from consumers about the notion of selling de-identified consumption data.
  - A marketing plan should be developed to ascertain the demand for this data, its potential use and what third parties are prepared to pay. The plan should address pricing to ensure reasonably priced access by commercial and non-commercial users. Such a plan might also inform both the likely success of the self-funding access model coupled with the size of the commercial and non-commercial demand.
  - The SME should propose a protocol for receiving and dealing with consumer complaints regarding the release of the data. The OEB notes that the SME has proposed an Ethics Committee which could address any issues associated with the potential use of the data by a purchaser.
  - The application should consider how to inform consumers of the fact that de-identified information will be released to third parties.
  - The SME should seek approval of the basic terms of any Data Use Agreement with third parties. While recognizing that Data Use Agreements may need to be tailored to match the specific circumstances surrounding any particular release of data, the OEB’s view is that there should be certain generic protections built into such agreements.
8. What mechanism should be used to review the SME’s Third Party Access program in the future?

The Parties acknowledge that any incremental costs that may be incurred by local distribution companies as a result of the SME providing third party access is not within the scope of this proceeding and was not considered as part of the Settlement Conference.

## D. THE SETTLED ISSUES

### 1. Is the proposal that access only be provided to those listed, the “Canadian Governmental Entities” as defined in Ex B-6-5 Defined Terms & Acronyms appropriate?

The SME’s Application proposes to expand the access or sharing of the data beyond the OEB and the IESO to Canadian Governmental Entities, which is defined in Ex B-6-5 Defined Terms & Acronyms as:

Federal and provincial governments, including ministries, agencies, boards, commissions, tribunals and wholly-owned corporations, or in the case of non-share capital corporations, where such corporations are controlled by a federal or provincial governments, as well as municipalities (or regional governments), universities, school boards, hospitals and First Nations. First Nations means a “council of the band” as that term is defined in subsection 2(1) of the *Indian Act* (Canada). “Canadian Governmental Entities” does not include private sector entities, publicly traded companies, individual doctors, professors, or government officials and all those entities that do not fall in one of the categories outlined above.

As part of the Package Settlement, the Parties agree that the SME’s proposal is appropriate provided there is a clear process for the SME’s evaluation of whether a party requesting data (referred to as the “requestor”) is a Canadian Governmental Entity and that the requestor have a right to have the SME’s decision reviewed by the Ethics Review Committee. The SME will have the necessary arrangements for the Ethics Review Committee in place prior to providing third party access.

For that purpose, the parties agree upon the revised description of the role and composition of the Ethics Review Committee to replace the description in Ex B-3-1 Terms of Access Principles:

As part of the intake process, the SME will constitute the Ethics Review Committee in the event that:

- (i) the SME determines the requestor is not a Canadian Governmental Entity and the requestor gives notice that it wishes to have the SME’s decision reviewed;
- (ii) in the view of the SME, a request raises potential ethical considerations to review and assess the nature of the request; or
- (iii) the requestor submits a complaint about the SME’s data access process.

The composition of the Ethics Review Committee will consist of at a minimum, an IESO Director-level employee, Legal Counsel and an external party with expertise in ethics and large data sets. The outcome of the Ethics Review Committee’s evaluation can result in a request being denied, further review with the requestor/modifications or acceptance.

Decisions from the Ethics Review Committee will be communicated to the requestor.

The SME shall keep records of any complaints received from requestors.

Two flowcharts are attached as appendices:

- A flow chart depicting the SME’s process of evaluating and fulfilling a third party request for access to data, including the role of the Ethics Review Committee as Appendix “A”.
- A flow chart depicting the SME’s interaction with the customer complaints process of local distribution companies (“LDCs”), is attached as Appendix “B”.

The Parties further agree that the SME, in conjunction its annual reporting to the OEB on the Smart Metering Charge (the “**SMC**”) as required by EB-2017-0290, will provide information on the third party access requests received by the SME in the preceding calendar year (the “**SME Annual Report**”). The SME Annual Report shall be sent to all Parties and OEB Staff by April 30 of each year. The Parties and OEB Staff may ask the SME questions on the SME Annual Report within 10 days of the report being sent by the SME and the SME will respond to these questions. The SME will file the report with the OEB by May 31 of each year. A copy of the final SME Annual Report will also be provided to all Parties of this Settlement Proposal.

The information related to data requests provided in the SME Annual Report shall include:

- the name of each requestor;
- a summary of the use case for each request;
- whether the request was granted or denied and, in the event of a denial, the reason for the denial and whether the denial was reviewed by the Ethics Review Committee; and
- the number of complaints from requestors received by the SME.

The SME agrees that it will be bound by the annual reporting obligations in this Settlement Proposal regardless of the outcome of its next SMC application.

*Evidence:* The evidence in relation to this issue includes the following:

A-1-1	Application
B-1-1	The Proposed Third Party Access Plan
B-3-1	Terms of Access Principles
B-6-5	Defined Terms & Acronyms

## **2. Is the SME’s proposal to de-identify data shared with Canadian Governmental Entities appropriate?**

The SME’s Application proposes to de-identify data shared with Canadian Governmental Entities in accordance with the methodology described and reviewed in Ex B–6-2, Privacy Analytics: An Independent Assessment of the IESO’s Planned Privacy Strategy for Third Party Data Access (the “**Privacy Analytics Assessment**”). For the purposes of the Application, the term “data” was defined in Ex B-6-5 as follows:

Any of the information and data related to the metering of consumers’ consumption or use of electricity in Ontario, including the information the OEB required the SME to collect in its decision in EB-2016-0284.

The Privacy Analytics Assessment was premised on the implementation of the following measures by the SME:

- Data shared with recipients will be aggregated and no individual-level data will be shared.
- Household-level indicators, even in pseudonymized form, will not be shared with recipients.
- To protect the identities of consumers, any data shared with recipients will be aggregated in groups of at least:

- 6 premises if there is an enforceable data use agreement in place with the data recipient;
  - 9 premises if there is no contract in place but there are clear terms of use with a trusted recipient;
  - 15 premises if the data is to be released publicly (further aggregation may be warranted to prevent geographically targeted advertising);
  - Alternative group sizes are possible with alternative privacy protections (e.g., highly controlled environments might warrant a group size of 3).
- 
- Only the average or total energy consumption data across postal code areas may be shared, along with the number of premises in each postal code area.
  - There is sufficient variability in electricity consumption data between consumers contributing to the average value in each postal code area
  - A dominance rule of 75% will be followed.
  - The year that occupants move in and out of premises will never be shared (the day and month are not collected).

The SME will implement the methodology described and reviewed in Ex B–6-2, including the measures identified above, in providing third party access to de-identified customer data. On that basis, the Parties agree that the proposal is appropriate as part of the Package Settlement.

The SME's proposal is designed in accordance with the *De-identification Guidelines for Structured Data*, June 2016 published by the Information and Privacy Commissioner of Ontario (the "**2016 IPC Guidelines**"). In the event the 2016 IPC Guidelines are amended by the Information and Privacy Commissioner ("**IPC**") in a manner that requires a change in the methodology described and reviewed in this application, the SME will provide notice of any change to the OEB and the Parties to this Settlement Proposal.

*Evidence:* The evidence in relation to this issue includes the following:

B-1-1	The Proposed Third Party Access Plan
B-3-1	Terms of Access Principles
B-6-2	Privacy Analytics: An Independent Assessment of the IESO's Planned Privacy Strategy For Third Party Data Access
B-6-5	Defined Terms & Acronyms
EB-2018-0316, B-I-10, Sched 4.20	Information and Privacy Commissioner of Ontario. 2016. "De-Identification Guidelines for Structured Data."



3. **Is the proposal that the costs for providing access for standard requests should be recovered through the Smart Meter Charge appropriate?**
4. **Is the proposal that, for non-standard requests, access should be provided at cost and charged to the requestor appropriate? Is the proposed rate of \$145 per hour appropriate?**
5. **What is the appropriate accounting treatment of costs and revenues from third party access?**

The Parties propose to settle issues 3, 4 and 5 on the following basis as part of the Package Settlement.

The SME's Application proposes to provide access to standard data sets without charge and to recover any associated costs from ratepayers through the Smart Meter Charge ("**SMC**"). The SME has estimated that providing TPA standard requests and the public offerings of highly aggregated smart meter data to be approximately \$350,000 per year or approximately \$0.07/smart meter per year, based on the SME receiving up to 40 requests. Under the SME proposal "non-standard" requests would be recovered directly from the requesting party at a charge of \$145/hour.

The SME has agreed to charge for both standard and non-standard requests at a charge of \$145/hour, with the exception of requests made by the IESO or the OEB which shall be fulfilled at no charge in accordance with the OEB's prior direction. The \$145/hr represents the IESO's fully allocated labour costs. The Parties agree that the proposed rate of \$145/hour is appropriate.

The Parties agree that the SME will track costs associated with fulfilling requests for data access and any revenue generated from requestors in a new variance sub-account to the SME Balancing Variance Account ("**BVA**") to be called the "TPA Variance Account". The balance of the TPA Variance Account will be considered for future disposition as part of the BVA. It is the parties' expectation that the information with respect to actual costs will be made available in a future SME application. Nothing in this Settlement Proposal should be construed as limiting the Parties, including the SME, from proposing an adjustment to the SME fees in lieu of, or in combination with, the \$145/hour or other hourly charge, in a future SME application.

In accordance with the settlement of these issues, the Table 1 in Ex B-5-1 is replaced by the revised tariff table below.

	<b>Rate</b>	<b>Costs are recovered</b>	<b>Revenue and costs are tracked</b>
Public offerings of highly aggregated smart meter data	\$0	Recovered through the Smart Meter Charge as approved by the OEB in EB-2018-0316	N/A
Requests from IESO or OEB	\$0		N/A
Canadian Governmental Entities Request	\$145/hour	From the Canadian Governmental Entities requestor	TPA Variance Account

*Evidence:* The evidence in relation to this issue includes the following:

- |       |   |
|-------|---|
| B-1-1 | The Proposed Third Party Access Plan  |
| B-5-1 | Costs and the Suggested Tariff Sheet for Fulfilling Standard and Non-Standard Data Requests |

## **6. Are the basic terms of the Data Use Agreement appropriate?**

The SME's Application proposes that the OEB approve the basic terms of a Data Use Agreement (the "DUA") in accordance with the OEB's direction in EB-2018-0316.

As part of the Package Settlement, the Parties agree that the SME's proposal is appropriate and that the basic terms of the DUA approved by the OEB should be the following:

- License provisions setting out the scope of the data user's entitlements to use the data and making clear that it will not acquire any rights or title in the data not set out in the agreement.
- Restrictions on use of the data, including ensuring it is only used for the purpose outlined in the use case and will not be used to contact individuals to whom the data relates.
- Requirements to safeguard the data, including administrative, physical, organizational and technological safeguards.
- Requirements relating to appropriate policies and procedures about the security of the data, including as related to retention, transfer and destruction of information.
- Requirements to notify the SME in the event of demands for the data, unauthorized access to the data and any actual or suspected "data incident".
- Confidentiality requirements.
- Provisions that allow for the SME's assessment of compliance with the terms of the DUA.
- A right for the SME or its authorized representatives or both, with reasonable notice, to access the data user's premises, systems or logs to audit and verify the data user's compliance with the DUA.

A sample of a draft DUA is attached as Appendix "C" for information purposes. For the reasons set out in Ex B-4-1, the Parties agree that the SME should have flexibility to tailor the DUA to adapt to the needs of the requestor and/or the use case, while ensuring the protections outlined above remain in place.

*Evidence:* The evidence in relation to this issue includes the following:

- |       |                                      |
|-------|--------------------------------------|
| B-1-1 | The Proposed Third Party Access Plan |
| B-4-1 | The Data Use Agreement               |

## **7. Does the application sufficiently respond to prior Board direction in EB-2018-0316?**

The Parties agree that, as modified by the terms of this Package Settlement, the SME's Application sufficiently responds to each of the specific directions made in the OEB's prior decision in EB-2018-0316. These were specifically:

- The application should summarize the SME’s consultation with consumers including what it heard from consumers about the notion of selling de-identified consumption data.
  - The SME retained IPSOS to assist in a consumer consultation. The SME’s consumer consultation is summarized in Ex A-3-1. The IPSOS report “IESO Smart Meter Data Research” was included as Ex B-6-1.
- A marketing plan should be developed to ascertain the demand for this data, its potential use and what third parties are prepared to pay. The plan should address pricing to ensure reasonably priced access by commercial and non-commercial users. Such a plan might also inform both the likely success of the self-funding access model coupled with the size of the commercial and non-commercial demand.
  - As set out at Ex A-3-1, the SME did not complete a marketing plan because the data will only be provided to Canadian Governmental Entities.
- The SME should propose a protocol for receiving and dealing with consumer complaints regarding the release of the data. The OEB notes that the SME has proposed an Ethics Committee which could address any issues associated with the potential use of the data by a purchaser.
  - The consumer complaint process has been outlined in the flowchart attached as Appendix “B”.
  - The SME will provide all LDCs a direct point of contact at the SME.
  - If the SME is unable to resolve the consumer complaint, the consumer will have access to the IPC’s review process.
  - As set out in Issue 1, the Ethics Review Committee will be responsible for reviewing requestor complaints.
- The application should consider how to inform consumers of the fact that de-identified information will be released to third parties.
  - As described in Ex A-3-1, the SME will make educational materials available in written format and on its website explaining the purpose of third party access, the benefits to Ontarians, the organizations that will have access and the process to enable such access, the privacy, ethical and security practices to protect the data. The SME will work with the LDCs to leverage these materials for use on call center scripts or on their websites.
  - The SME does not propose to contact consumers with smart meters to inform them that access to the deidentified data held by the SME will be provided to the eligible category. LDCs who wish to inform their consumers of this initiative will be enabled and supported by the IESO through the communication materials described above.
- The SME should seek approval of the basic terms of any Data Use Agreement with third parties. While recognizing that Data Use Agreements may need to be tailored to match the specific circumstances surrounding any particular release of data, the OEB’s view is that there should be certain generic protections built into such agreements.

- This matter is dealt with under Issue 6.

B-1-1	The Proposed Third Party Access Plan
B-3-1	Responding to the Board's Directions in EB-2018-0234
B-6-1	IPSOS IESO Smart Meter Data Research
B-6-2	Privacy Analytics: An Independent Assessment of the IESO's Planned Privacy Strategy For Third Party Data Access

**8. What mechanism should be used to review the SME's Third Party Access program in the future?**

The Parties agree that the SME's third party access program should be reviewed in the future with the benefit of the SME's experience in providing access to Canadian Governmental Entities.

To achieve this objective, the SME will include in the SME Annual Report for 2024 (to be filed by April 30, 2025) an assessment of the third party access program that will include at least two full years of experience with the program (2023 and 2024). At a minimum, the SME will include:

- an assessment of expanding third party access to other non-commercial entities and, in the event the SME is not proposing to expand access, an explanation of its rationale for not doing so; and
- an assessment of implementing an option for customers to opt out of providing third party access to their data held by the SME, including seeking input from local distribution companies on the feasibility of implementing this option.

*Evidence:* The evidence in relation to this issue includes the following:

B-1-1	The Proposed Third Party Access Plan
B-3-1	Responding to the Board's Directions in EB-2018-0234

**Appendix A**  
**Third Party Request Process Flow Chart**

**Appendix B**  
**Customer Concern or Complaint Process Flow Chart**

**Appendix C**  
**Draft Data Use Agreement**