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BY EMAIL

February 23, 2022

Ms. Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4
Registrar@oeb.ca

Dear Ms. Marconi:

**Re: Ontario Energy Board (OEB)
Staff Submission 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
OEB File Number: EB-2021-0292**

Please find attached OEB staff's submission in the above referenced proceeding,
pursuant to Procedural Order No. 1.

Yours truly,

Michael Bell

Michael Bell
Senior Advisor, Application Policy and Conservation

Encl.

cc: All parties in EB-2021-0292



ONTARIO ENERGY BOARD

OEB Staff Submission

**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**

EB-2021-0292

February 23, 2022

Introduction

The Independent Electricity System Operator (IESO), in its capacity as the Smart Metering Entity (SME), filed an application with the Ontario Energy Board (OEB) on October 29, 2021 under section 78¹ of the *Ontario Energy Board Act, 1998*, Ontario Regulation 453/06 made under the *Ontario Energy Board Act, 1998*. (Application). A settlement conference was held from January 17 to January 18, 2021 and continued on January 20, 2022. The IESO filed a settlement proposal on February 15, 2022. The settlement proposal represented a full settlement.

This submission is based on the status of the record at the time of the filing of the settlement proposal and reflects observations that arise from OEB staff's review of the evidence and the settlement proposal. It is intended to assist the OEB in deciding upon IESO's application and the settlement proposal.

Background

The concept of having an agency to “accomplish the government’s policies in relation to its smart metering initiative”,² to be called the SME, was entrenched in the *Electricity Act, 1998*, through amendments which took effect in 2006. Shortly thereafter, the IESO was designated as the SME.³

The *Electricity Act, 1998* provides that the SME's objects include the following:

1. To plan and implement and, on an ongoing basis, oversee, administer and

¹ 78 (2.1) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract.

(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity, unit smart metering or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*.

(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*.

(3.0.2) The Board may make orders permitting the Smart Metering Entity or distributors to establish one or more deferral or variance accounts related to costs associated with the smart metering initiative, in the circumstances prescribed in the regulations.

(3.0.3) The Board may make orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered.

² *Electricity Act, 1998*, s. 53.7(1).

³ O. Reg. 393/07 (Smart Metering Entity), effective March 28, 2007.

- deliver any part of the smart metering initiative as required by regulation under this or any Act or directive made pursuant to sections 28.3 or 28.4 of the *Ontario Energy Board Act, 1998*, and, if so authorized, to have the exclusive authority to conduct these activities.
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.** (emphasis added)
 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. (emphasis added)
 5. To own or to lease and to operate equipment, systems and technology, including telecommunication equipment, systems and technology that permit the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including owning, leasing or operating such equipment, systems and technology and associated equipment, systems and technologies, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
 6. To engage in such competitive procurement activities as are necessary to fulfil its objects or business activities.
 7. To procure, as and when necessary, meters, metering equipment, systems

- and technology and any associated equipment, systems and technologies on behalf of distributors, as an agent or otherwise, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
8. **To recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities.** (emphasis added)
 9. To undertake any other objects that are prescribed by regulation.⁴

It is apparent from item 4 that one of the very purposes for creating the SME was to make information about electricity consumption and use available to third parties.

For the last few years, the SME has been working on how to make the data available. In its January 26, 2016 Order extending the SME's licence⁵, the OEB expressed its opinion on the SME's progress in that regard:

Innovation is about creating new value. **The SME, through its provision of reliable provincial energy consumption data from over 4 million meters, was in part established to provide an opportunity for provincial electricity agencies, individual local distribution companies, and third parties seeking to create new value to benefit consumers. Ontario's head start on smart meters is an opportunity that could be leveraged to enhance innovation. The opportunity must be pursued in a more timely way.** The OEB is of the view that closer regulatory scrutiny is required to ensure that the SME move with increased speed to enhance the value of the MDM/R data.⁶ (emphasis added)

In that Order, the OEB required the SME to collect from distributors, beginning in 2017, certain information associated with each meter (namely the postal code, the distributor rate class, and occupant change data – modified where necessary to render it non-personal information), and to prepare an implementation plan for providing third party access to the data.

The SME filed an implementation plan with its licence application later that year. The OEB noted that the SME had “established a working group which included a broad

⁴ *Electricity Act, 1998*, s. 53.8 (emphasis added).

⁵ EB-2015-0297

⁶ At p. 3 (emphasis added). The MDM/R refers to the SME's Meter Data Management Repository.

selection of LDCs across the province and representatives from the Ministry of Energy, EDA, the IESO and the OEB”, and commended the working group on the progress that had been made since the January 26, 2016 Order.⁷ The OEB also noted that the SME had, on the advice of the Information and Privacy Commissioner, engaged a privacy consultant to conduct a risk assessment. The OEB continued the requirement to collect certain non-personal information from distributors (the postal code associated with a meter, etc.). However, the OEB did not say anything about what, if anything, the SME should charge for providing third party access to the data.

In its January 26, 2016 order extending the SME’s licence to December 31, 2016, the OEB expressed concerns about the SME’s progress in fulfilling its mandate to “provide and promote” third party access to the data it manages. The OEB noted that the “SME has yet to achieve the value inherent in a single provincial repository of electricity consumption data from over 4 million smart meters.” Such data “would support many activities at the provincial or regional level including, among others: the design of conservation and demand management programs, the assessment of the effectiveness of time of use pricing, the design of distribution rates and time of use prices, and the regional planning of transmission and distribution systems.” Moreover, “there are potentially much greater benefits to consumers from this consumption data, in particular by making non-personal information available to third parties to assist them in developing new innovative products and services that will enhance customer choice and control.”⁸

Previous SME Application re Third Party Access⁹

The IESO filed an application with the OEB on December 4, 2018 seeking approval to amend its licence to enable it to provide access to certain non-personal data about electricity usage to third parties at market prices.

Broadly, the intervenors expressed three types of concerns: concerns regarding the protection of privacy, concerns regarding market pricing, and concerns regarding the consultation undertaken by the SME. OEB staff was supportive of the application.

While the OEB acknowledged the efforts of the SME to address these privacy concerns and to consult with stakeholders, the OEB was of the view that a more comprehensive consumer engagement process should take place.

In the Decision and Order, the OEB indicated that “although, as the OEB has noted in

⁷ Decision and Order, November 24, 2016 (EB-2016-0284), at pgs. 5 and 6.

⁸ Order, January 26, 2016 (EB-2015-0297), p. 2.

⁹ EB-2018-0316

previous decisions, there are benefits to making the data available to third parties, there are also risks. The SME must therefore proceed cautiously. For the reasons that follow, the OEB is of the view that more work needs to be done on developing a framework for providing third party access”.

The OEB agreed with an intervenor that “a measured approach is appropriate”. The OEB’s overarching concern is to ensure that consumers are well informed concerning the data collection process and are protected from any disclosure that enables access to their personal identifiable data obtained from their meter.¹⁰

For these reasons, the OEB did not approve the SME’s application as filed (although, as noted in the Decision, the SME was able to proceed with making the Public Offerings available). Public Offerings are highly aggregated MDM/R consumption data that are provided without charge. Any costs to the SME in preparing such products would be considered part of its normal business operations and recovered through the Smart Metering Charge paid by distributors and ultimately passed through to all consumers with a smart meter.¹¹

In its Decision and Order, the OEB stated that “the OEB would like the SME to proceed cautiously given the concerns expressed.”¹²

The SME was directed to develop a revised proposal for third party access after further consultation with consumers, and to submit a new application to the OEB by the end of 2021. The application was to include at least the following elements:

- A summary of the SME’s consultation with consumers including what it heard from consumers about the notion of selling de-identified consumption data.
- A marketing plan that ascertained the demand for this data, its potential use and what third parties are prepared to pay. The plan was required to address pricing to ensure reasonably priced access by commercial and non-commercial users.
- A proposed protocol for receiving and dealing with consumer complaints regarding the release of the data.
- Consideration of how to inform consumers of the fact that de-identified information will be released to third parties.

¹⁰ Decision and Order, November 24, 2016 (EB-2016-0284), at p.14

¹¹ EB-2021-0292, Exh A, Tab 1, Sch 1, p.3

¹² Decision and Order, November 24, 2016 (EB-2016-0284), at p.15

- A request for approval of the basic terms of any Data Use Agreement (DUA) with third parties.

Post Decision and Order¹³

Since the issuance of the Decision and Order, the SME stated in its evidence¹⁴ that it has completed the following:

- i. Provided the OEB and the IESO access to the data.
- ii. Provided highly aggregated data at no charge.
 - (i)The SME has not received any complaints about this data disclosure.
- iii. Conducted research (utilizing Ipsos, an internationally recognized leader in market research) with 1,701, residential and small commercial smart meters customer across Ontario to discuss, hear and understand their issues and concerns around the provision of smart meter data to third parties.
- iv. Consulted and worked with each of the parties that were intervenors in the SME's 2018 TPA application, which included Vulnerable Energy Consumers Coalition, Consumer Council of Canada, Building Owners and Managers Association and the EDA and various of its committees in the development of this application and the DUA.
- v. Consulted with each of Hydro One Networks Inc. and Toronto Hydro on the proposed mechanisms to deal with consumer enquiries and complaints to LDCs with respect to third party access to data.
- vi. Consulted and worked with the SSC on managing consumer enquiries and complaints with respect to third party access to data.
- vii. Shared information on this application and associated materials and consulted as appropriate with the following: (i) The IESO's Stakeholder Advisory Committee (ii) Information and Privacy Commissioner of Ontario (iii) The Association of Municipalities of Ontario, and (iv) The Association of Major Power Consumers of Ontario.
- viii. Shared information and provided updates on the application with OEB Staff.

¹³ EB-2018-0316

¹⁴ EB-2021-0292, Exh A, Tab 3, Sch 1, pp. 8-9

Current Application

On October 29, 2021, the IESO, in its capacity as the SME applied to the OEB for approval to:

- Expand third party access to de-identified electricity consumption data beyond the IESO and OEB to “Canadian Governmental Entities”¹⁵
- Provide access to de-identified consumption data under a no-fee model for standard requests, with costs covered by the Smart Metering Charge
- Provide access to de-identified consumption data under a cost recovery model of \$145.00 per hour for complex requests
- Use basic terms of the DUA and the provision to tailor the DUA to suit specific circumstances

The SME stated that in preparing third party access plan the SME has considered the results of the consumer research conducted by Ipsos in late 2020 with 1,701 smart meter residential and small commercial consumers who provided their opinions on sharing de-identified consumption data with third parties.

The SME stated that it considered the comments and feedback provided by intervenors and other stakeholders in consultations on this application and the spirit of the OEB’s decision on the SME’s prior application.

Settlement Proposal

The settlement proposal indicates that 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 IESO stated that the \$145/hr represents the IESO’s fully allocated labour costs.¹⁶

Intervenors agreed with the SME’s proposal to expand third party access to de-identified electricity consumption data beyond the IESO and the OEB to only Canadian Governmental Entities. This a more narrow approach to providing third party access than what the SME applied in its previous application and was not approved by the OEB.

Intervenors and the SME agreed to include in the SME Annual Report for 2024 (to be

¹⁵Defined 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).

¹⁶ EB-2021-0292, Settlement Agreement, February 15, 2021, p. 6

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).

OEB Staff Submission

OEB staff has reviewed the settlement proposal in the context of relevant OEB decisions, and the OEB's statutory obligations. OEB staff submits that the settlement proposal reflects a reasonable outcome. Staff further submits that the settlement proposal includes adequate supporting rationale.

OEB staff's submission provides reasons for OEB staff's position by commenting on certain aspects, rather than examining each issue on the issues list individually.

Standard and Non-Standard Requests

As noted previously, the SME and intervenors have 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.

OEB staff has no concerns with charging on a cost recovery basis for both standard and non-standard requests.

Future Third Party Access

Currently, the SME provides the OEB and the IESO with access to MDM/R data, including complex data sets. Through settlement, the parties have agreed that access to MDM/R datasets should be expanded to include entities that meet the definition of a Canadian Government Entity.¹⁷ Regarding this expanded access, the Settlement Proposal states the following:

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**

¹⁷ EB-2021-0292, Exh B, Tab 6, Sch 5 - Defined Terms

- 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.¹⁸ (emphasis added)

OEB staff appreciates that the OEB has previously indicated that the SME should “proceed cautiously”¹⁹ with respect to the sharing of data with third parties and acknowledges that the data sharing approach proposed in the Application is responsive to that OEB direction.

However, OEB staff encourages the SME to consider expediting its assessment of expanding beyond Canadian Governmental Entities to sooner than 2025, based on the lessons it will have learned under the cautious approach set out under the settlement proposal. The OEB has consistently acknowledged the inherent value MDM/R data holds and the potential for third parties to maximize that value through the development of new innovative products and services that enhance customer choice and control. Expediting access beyond Canadian Governmental Entities could help facilitate earlier adoption of this type of innovation to the benefit of all consumers.

~All of which is respectfully submitted~

¹⁸ EB-2021-0292, Settlement Agreement, February 15, 2021, p. 12

¹⁹ EB-2018-0316, Decision and Order, October 24, 2019