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## Smart Metering Entity Not Permitted to Sell Customer Data to Third Parties at Market Prices

By Zoë Thoms

The Ontario Energy Board (OEB) recently rejected an application by the Independent Electricity System Operator (IESO), in its capacity as the provincial Smart Metering Entity, to sell non-personal data about electricity usage to third parties at market prices.

In 2007, following the installation of smart meters across Ontario, the IESO was designated as the Smart Metering Entity (SME). The SME collects electricity consumption data from more than 4 million smart meters, which is then used by distributors to bill customers.

Section 53.8 of the *Electricity Act, 1998* sets out the objectives of the SME, which includes providing and promoting non-discriminatory access by distributors, retailers, the IESO and other persons to data related to the metering of consumers' consumption or use of electricity in Ontario. The SME is required to recover, through just and reasonable rates, the costs and an appropriate return approved by the OEB associated with the conduct of its activities.

In a 2016 proceeding, the OEB expressed concerns about the SME's progress in meeting the objective of providing and promoting third party access to the data it manages:

While the SME is functioning, it has yet to achieve the value inherent in a single provincial repository of electricity consumption data from over 4 million smart meters. The value of a province-wide database of customer consumption 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 the time of use prices, and the regional planning of transmission and distribution systems. Indeed it has been the OEB's experience that the limited data provided by the SME pursuant to the SME/LDC agreement has slowed the OEB's work, particularly in the areas of time of use pricing and rate design.

As well, the OEB has long recognized that 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.

Beginning January 1, 2017, the OEB ordered the SME to collect additional information from distributors associated with each meter, including postal codes. The SME's most recent application to the OEB was to fulfil its commitment to propose a model for third party access to the expanded consumption data.

The SME proposed three categories of data:

1. **Public Offerings** made available free of charge of highly aggregated products, such as monthly consumption data aggregated by postal district.
2. **Standard Private Offerings** of hourly or daily consumption data aggregated at a more granular geographic level made available at market price.
3. **Custom Private Offerings** of tailored data to meet the requirements of third parties made available at a market price.

Several groups intervened in the proceeding to object to the SME's proposal as it related to the Standard and Custom Private Offerings, while OEB staff supported the application for the most part. The intervenors expressed three key concerns:

1. **Privacy** – although steps had been taken to address privacy, the SME acknowledged that it could not eliminate the risk of re-identification. Intervenors also argued that the consent of customers was required for their consumption data to be sold.
2. **Market Pricing** – some intervenors objected to the SME's proposal to charge market prices arguing that the Standard and Custom Private Offerings ought to be priced on a cost-recovery basis. Otherwise, intervenors argued that the SME's monopoly position in negotiations with third parties could result in claims of discrimination or abuse from those entities paying the amounts.
3. **Consultation** – intervenors argued that the consultation undertaken by the SME was only a first step and that further work was required to make customers aware that their consumption data would be sold.

The OEB agreed with the interveners' submission that a more measured process for making the data available to third parties was needed. In making its findings, the OEB recognized that the issue before the Board was not *whether* the SME should make the consumption and use data available to parties. The SME is required to do so by the *Electricity Act, 1998*. The issue was *how* the SME make the data available.

The OEB accepted the SME's application to make Public Offerings available online at no charge. These products were highly aggregated and did not trigger the same privacy concerns as the other categories. With respect to the Standard and Custom Private Offerings, the OEB rejected the SME's application to sell data to third parties:

As OEB staff noted in its submission, the courts have found that individuals have a reasonable expectation of privacy in respect of their meter consumption data, albeit a "significantly attenuated" one. In addition, some commercial consumers may have a legitimate competitive interest in keeping such data confidential. The SME stressed in its application that the enhanced data is not personal information, but rather will be de-identified. The intervenors, on the other hand, seized on the SME's acknowledgement that the risk of re-identification cannot be ruled out.

While continuing to affirm the January 26, 2016 order's goal of creating new value for consumers, the OEB is of the view that, in light of the concerns expressed by stakeholders in this proceeding, the SME should proceed cautiously with third party access. The OEB agrees with CCC 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.

While the OEB acknowledges the efforts of the SME to address these privacy concerns and to consult with stakeholders, it is of the view that a more comprehensive consumer engagement process should take place. As the intervenors have pointed out, it is not clear from the evidence that consumers support the notion that consumption data (even if de-identified) should be offered for sale to third parties.

The OEB directed the SME to file a new application for a framework for third party access with the following elements:

- a summary of SME's consultation with consumers;
- a marketing plan addressing the demand for the data, its potential use and what third parties are prepared to pay;
- a protocol for receiving and dealing with consumer complaints relating to the release of data;
- a plan to inform consumers of the fact that de-identified information will be released to third parties; and
- a draft generic Data Use Agreement for use when providing data to third parties.

The SME has until the end of 2021 to file the new application.

## Author



**Zoë Thoms**  
Associate  
T 416.865.7755  
zthoms@airdberlis.com

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