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## OEB Staff Bulletin Opens Door for LDCs to Own Behind-the-Meter Storage Assets in Regulated Operations

By Benjamin Mayer-Goodman and David Stevens

On August 6, 2020, Ontario Energy Board (OEB) Staff released a Staff Bulletin suggesting that local distribution companies (LDCs) may own and operate behind-the-meter (BTM) energy storage, and treat the assets as part of regulated operations, if the purpose is to remediate poor service reliability. The Bulletin only expresses the opinion of OEB Staff and is not binding on Board members/commissioners, who ultimately determine contested matters.

The Staff Bulletin is in response to an OEB Innovation Sandbox proposal from a rate-regulated electricity distributor requesting BTM storage assets to improve service reliability. The Innovation Sandbox initiative provides advice and support to project proponents seeking to advance “innovative projects related to electricity or natural gas service” (see our post about the initiative here).

Under Section 71(1) of the *Ontario Energy Board Act, 1998* (OEB Act), LDCs are generally prohibited from carrying on business activities other than the distribution of electricity, unless the business activity is carried out through one or more affiliates. While there are exceptions to this rule, as set out in Sections 71(2) and (3) of the OEB Act, most activities captured by those exceptions are not considered distribution activities and cannot be funded through distribution rates. Such activities may be referred to as “non-utility” activities of a distributor.

The OEB has previously been resistant to the notion that the OEB Act allows LDCs to finance BTM services through distribution rates. The Board’s 2012 Renewed Regulatory Framework for Electricity Distributors described BTM services as a “non-utility activity,” that could not be covered through rates. Similarly, a recent OEB decision indicated that current policies do not view BTM energy storage as a regulated utility activity (see our discussion here).

However, as described in their recent Staff Bulletin, OEB Staff now express the view that BTM storage services (which are permitted non-utility activities under section 71(3) of the OEB Act) may be considered distribution activities if the purpose is to equalize service reliability between customers of the same rate class.

The Staff Bulletin notes that customers with poor service reliability may pay the same rates as those with comparably better reliability. As noted by OEB Staff, until recently, utility programs aimed at improving reliability tended to focus on grid-side improvements funded through distribution rates. In the Staff Bulletin, OEB Staff opine that it is now reasonable to “expand reliability improvement projects to include new technology options” such as energy storage.

BTM storage can provide a range of services to customers. Nevertheless, OEB Staff find that BTM investments made for the purpose of addressing a distribution concern should be considered a distribution activity, even if there are other incidental customer benefits. However, OEB Staff caution that investments driven by other purposes should not be considered distribution activities, even if there are distribution benefits. For example, OEB Staff would not consider BTM storage to be a distribution activity if its purpose is to “provide a customer with the financial benefits that might be obtained through peak-shaving.” Further, OEB Staff note that BTM services should be considered distribution activities only if distributors control the BTM asset such that its use improves reliability for customers.

As described in our earlier post, in March 2019, the OEB commenced its Responding to DERs consultation process to evaluate how the Ontario electricity sector can respond to DERs and encourage utilities and regulated service providers to “embrace innovation” in their operations and customer services. In January 2020, an OEB decision confirmed that utilities wishing to include BTM storage in their regulated

operations should seek policy changes in the ongoing Responding to Distributed Energy Resources (DERs) consultation. In responding to a proposal by Toronto Hydro to facilitate customer-funded BTM battery storage, the OEB held that the consultation, “is the appropriate forum to consider the role of distributors for customer-specific ESS [energy storage systems] and whether any regulatory policies should be amended.”

Interestingly, this recent Staff Bulletin may signal that LDCs could provide certain BTM energy storage services without the need for regulatory changes. However, as the Staff Bulletin is not binding on Board members/commissioners, there is no certainty that OEB decision makers will agree with OEB Staff on this matter.

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