



## BULLETIN

**DATE ISSUED: August 6, 2020**

**TO: All Licensed Electricity Distributors  
All Other Interested Parties**

**RE: Ownership and operation of behind-the-meter energy storage assets for  
remediating reliability of service**

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**This Bulletin provides guidance in respect of a set of circumstances in which the ownership and operation of behind-the-meter (BTM) energy storage assets by regulated electricity distributors may be considered a distribution activity for the purposes of section 71(1) of the *Ontario Energy Board Act, 1998* (OEB Act).**

### **1. Background**

Section 71(1) of the OEB Act generally prohibits a distributor from carrying on a business activity other than the distribution of electricity, unless the business activity is carried out through one or more affiliates. Sections 71(2) and 71(3) of the OEB Act set out certain exceptions to section 71(1), including for energy storage facilities that meet any criteria that may be prescribed by regulation. While activities captured by those exceptions may be carried out by the distributor, they are generally not distribution activities and therefore cannot be funded through distribution rates.<sup>1</sup> As the Ontario Energy Board (OEB) noted in the *Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* (RRF Report), “behind the meter services and applications that fall within the parameters set out in section 71(2) or section 71(3) of the OEB Act” are a “non-utility activity” and “must be accounted for separately from utility activities and be undertaken on a full cost recovery basis (in other words, not covered in rates).”<sup>2</sup>

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<sup>1</sup> See section 72 of the OEB Act.

<sup>2</sup> October 18, 2012, p. 49

In December 2019, the OEB Innovation Sandbox received a proposal from a rate-regulated electricity distributor requesting regulatory relief to allow its licensed distribution business to own and operate BTM storage assets<sup>3</sup> for the purpose of remediating long-term reliability problems experienced by customers who face long duration outages with relative frequency.

OEB staff has provided guidance to the distributor in relation to its Sandbox proposal, and is sharing its interpretation of the relevant legislative provisions, as well as the policy considerations and rationale underlying that guidance for the assistance of all stakeholders.

This Bulletin sets out OEB staff's view that ownership and operation of BTM storage is a distribution activity under section 71(1) where the purpose driving the distributor's decision to engage in the activity in relation to certain of its customers is to bring reliability to a level comparable with what is provided by the distributor to other customers in the same rate class.

## **2. The purpose of the BTM storage assets must be to remediate comparatively poor reliability of service**

Every licensed distributor, in OEB staff's view, is expected to provide a reasonably reliable level of electricity service to customers in its service area. The importance of reliability is reflected in section 1(1) of the OEB Act, which provides that one of the OEB's objectives is "[t]o protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service."

Ensuring reasonably reliable service is not ancillary or incidental to a distributor's business; rather, it is integral to it.<sup>4</sup> The cost of remediating reliability problems is generally recovered through distribution rates.

Reliability is a significant determinant of the value provided to customers. The rates paid by customers with comparatively poor reliability do not differ from the rates paid by those customers in the same class whose reliability is significantly better.<sup>5</sup> This issue is especially acute for customers who experience high frequency, long duration outages, since they have to accept and manage higher intermittency of service and yet pay the same rates.

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<sup>3</sup> For the purpose of this Bulletin, a BTM energy storage asset refers to a battery energy storage system that is located on the customer side of the meter and that provides electricity that can be used by the customer without passing through the meter.

<sup>4</sup> The OEB's focus on reliability is evident from the multiple references to "reliability" in the Distribution System Code and reliability performance measures included in the Electricity Utility Scorecard.

<sup>5</sup> OEB staff notes that this is especially true for those customer classes where distribution service is a fully fixed monthly charge.

Utility programs directed at improving reliability for targeted customer groups, such as “worst performing feeder” programs, have tended to focus on grid-side improvements. The costs of these programs are already funded through distribution rates. In OEB staff’s view, it is reasonable to expand options considered for reliability improvement beyond traditional wires investments given the emergence of new technology options such as storage, which can also be effective at improving reliability for specific customers.

OEB staff recognizes that, unlike more traditional wires investments, BTM storage can provide a range of services to customers beyond what are considered distribution services. OEB staff is of the view that a distributor’s deployment of BTM storage is nevertheless a distribution activity when its purpose is to bring a customer’s reliability to a level comparable to that of other customers in the same rate class. In other words, an investment made for the purpose of addressing a distribution concern should be considered a distribution activity, even if there are other incidental benefits to the customer – but an investment driven by another purpose, even if there are incidental benefits to the distribution system, should not be. To illustrate, OEB staff would not consider the deployment of BTM storage to be a distribution activity if the reason for the storage were to provide a customer with the financial benefits that might be obtained through peak-shaving.

An important consideration in assessing whether the deployment of a BTM storage asset is a distribution activity is whether the distributor has control of the asset, which is not in question when an asset is in front of a customer’s meter. In OEB staff’s view, when improving reliability is the intended distribution purpose, the distributor must control the BTM asset such that its use improves reliability for the customer.

In coming to the view expressed in this Bulletin, OEB staff has taken into consideration the OEB’s earlier statements in the RRF Report as well as the OEB’s December 19, 2019 Decision on the Custom Incentive Rate-setting application by Toronto Hydro-Electric System Limited (Toronto Hydro), which confirms that BTM activities generally are not considered distribution.<sup>6</sup> The customer-specific BTM proposal at issue in that application was not driven by a need to improve comparatively poor distribution reliability performance, and the OEB found that the project amounted to a non-rate regulated activity.<sup>7</sup> Staff also acknowledges that questions regarding potential new distribution services and the activities distributors may undertake are currently being explored in the OEB’s ongoing [“Utility Remuneration”](#) and [“Responding to Distributed](#)

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<sup>6</sup> EB-2018-0165.

<sup>7</sup> The OEB did, however, approve Toronto Hydro’s proposed investment in energy storage assets that were to be *in front of* the meter and were intended to serve a distribution function – one such project would “provide benefits to the power quality, reliability and capacity of the distribution system” and the other would “balance energy flows to allow renewable generation connections to proceed” (p. 114).

[Energy Resources](#)” consultations. This Bulletin should not be taken as expressing the broader view that BTM activities more generally should be considered distribution activities.

### **3. Other considerations**

The expansion of alternatives that may be available in undertaking reliability improvement does not, in OEB staff’s view, affect the obligation of distributors to ensure that their spending choices remain cost-effective. A BTM storage asset, like any other investment, is only appropriate when analysis of alternatives demonstrates it to be more cost effective at providing the intended distribution service. In assessing the cost-effectiveness of storage facilities, OEB staff would expect the analysis to include an assessment of the relative costs of locating the storage facility both in front of and behind the customer’s meter.

OEB staff also takes this opportunity to note that, in its view, when storage is being used as a distribution asset, a storage licence is not required and the OEB’s accounting Guidelines<sup>8</sup> on distributor ownership of generation do not apply. Similarly, no notice to the OEB is required under section 80 of the OEB Act.

### **4. Conclusion**

It is OEB staff’s view that distributor ownership and operation of BTM storage assets constitute a distribution activity when the purpose is to improve reliability for a customer such that it is more in line with that of the distributor’s other customers in the same rate class.

**The views expressed in this Bulletin are those of OEB staff and are not binding on the OEB. Any questions relating to this Bulletin should be directed to the OEB’s Industry Relations email address at [IndustryRelations@oeb.ca](mailto:IndustryRelations@oeb.ca).**

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<sup>8</sup> G-2009-0300: Regulatory and Accounting Treatments for Distributor-Owned Generation Facilities