OEB Staff Confirm That Electric Vehicle Charging Stations Can Be Owned and Operated by LDCs

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On July 13, 2016, the Ontario government announced that it would build 500 electric vehicle charging stations at 250 locations across the province. This comes shortly after a related announcement on July 7, 2016. On that day, the Ontario Energy Board ("OEB") staff ("Staff") published a bulletin (the "Bulletin") confirming that electricity distributors are permitted to own and operate electric vehicle ("EV") charging stations so long as the equipment provides for the management of load in a manner consistent with the Government's goals in electricity conservation.

Staff also confirmed that EV charging stations would not technically be a part of the "distribution system", and providing EV charging services would not be considered "retailing" of electricity. Early movers that purchased a Tesla, Leaf, or another EV may be able to breathe a sigh of relief. Having a home EV charging station should not mean that they have to become an OEB licensed distributor or retailer.

Ownership and Operation of EV Charging Stations

The Bulletin confirms Staff's view that Section 71(1) of the *Ontario Energy Board Act, 1998* ("OEB Act")[1] does not preclude a distributor from owning or operating EV charging stations so long as the equipment provides for the management of load in a manner consistent with the Government's goals in electricity conservation.

In arriving at this view Staff rely on the exceptions found under Section 71(2) of the OEB Act and Section 29.1(1) of the *Electricity Act, 1998* ("EA") which allow distributors to assist the Government of Ontario in achieving its goals, including services related to "the promotion of electricity conservation and the efficient use of electricity" and "electricity load management".

The additional clarity provided by the Bulletin is welcome in the distribution sector. However, several key questions still remain.

First, Staff does not address in the Bulletin whether or not EV charging stations owned and operated by a distributor could be included in ratebase. While Staff's determination

that EV charging stations are not part of the "distribution system" implies a non rated based approach, if EV charging stations play a critical role in electricity load management and electricity conservation (both core responsibilities of a distributor) then arguably they should be considered for inclusion in ratebase.

In making a determination, the OEB should keep in mind another relevant goal of the Government of Ontario, which can be found at page 21 of the Climate Change Action Plan, and which identifies increased access to the charging infrastructure for EVs as a priority to facilitate the planned increased use of EVs to help achieve the targeted reduction in greenhouse gas emissions.[2] Distributors could play an important role in electricity load management and conservation as the Government of Ontario pursues its goals in this regard. But if the costs of EV chargers are not recoverable in rates, this could severely limit the role that electricity distributors might play.

Second, Staff's Bulletin links two distinct concepts in the statement "so long as the equipment provides for the management of load in a manner consistent with the Government's goals in electricity conservation." Specifically, "electricity load management" is a separate and distinct service identified under both Sections 71(2) of the OEB Act and 29.1 of the EA from "the promotion of electricity conservation and the efficient use of electricity."

It is reasonably foreseeable that a distributor may want to undertake EV charging activities for “electricity load management” reasons (i.e. to better understand and manage the impact of these large portable loads on the distribution system) without also having an underlying electricity conservation program that they are trying to implement. The Bulletin is not clear whether or not such an approach would be permitted.

Overview of Licensing Requirements for EV Charging Stations

When considering this next aspect of the Bulletin, consider a simple question:

Does the OEB really want to have to license and regulate any person that owns or operates an EV charging station or that offers EV charging services?

You might not be surprised to learn that, when addressing potential OEB licensing requirements, Staff determined in the Bulletin that:

1. EV charging stations are not part of the "distribution system"; and
2. the sale of EV charging services is not "retailing".

In light of each of these conclusions, Staff take the position that OEB licensing will not be required for either owning or operating an EV charging station or for selling EV charging services, as Section 57 of the OEB Act will not apply in either case.

1. EV Charging Stations are not Distribution Systems

Staff first notes that the definition of "distribution system" in their OEB Act includes all structures and equipment used to convey electricity. However, Staff conclude that a structure utilized solely to charge EVs is not part of a "distribution system".

To distinguish between EV charging stations and full distribution systems, the Bulletin explains that "[g]iven that an EV charging station does not provide distribution capacity for load-types other than EVs, it should simply be viewed as a point of connection to the electrical grid. It follows then that a person who owns or operates an EV charging station is not a distributor solely because of that ownership or operation."

In making their determination, Staff draw heavily on the 2012 Toronto Hydro street lighting decision (EB-2009-0180 0181, 0182, 0183) (an extremely complicated decision by regulatory standards), which assessed whether or not the City of Toronto's street and expressway lighting system were part of the distribution system. Staff indicate their view that EV charging stations, like urban lighting fixtures, serve only one load use rather than multiple assets and are therefore not classifiable as "distribution systems". Section 57(a) of the OEB Act therefore will not apply to EV charging station owners and operators, and they will not be required to obtain distributor licenses from the OEB. Of note, the Bulletin further states that this ownership and operation will not, on its own, necessitate adherence to the OEB's regulatory regime.

2. Sale of EV Charging Services is not Retailing

Just as EV charging stations do not amount to distribution systems, the sale of EV charging services does not, in Staff's view, amount to retailing electricity.

Because EV charging stations provide a "complete service" of refuelling, rather than a proxy for a standard supply distribution service, they are not to be regulated by the OEB.

The Bulletin considers EV charging services to be analogous to "replacing a spent battery with a freshly charged battery, rather than providing access to equipment to charge the battery." Section 57(d) of the OEB Act requires licensing in order to undertake in the retailing of electricity in any capacity, including the actual act of selling or instead acting as a broker for a selling party. The Bulletin states that selling EV charging services is not such an action. Thus, the OEB Act does not apply and retail licensing is not required.

This clarification of licensing requirements, considered together with the distribution exemption for ownership and operation of EV charging stations, could greatly impact the flexibility of LDCs and other distributors in expanding their services to include such charging stations as these become more prevalent throughout Ontario and Canada.

3. Bulletin not binding on the OEB

The Bulletin reflects OEB staff views on ownership and operation of EV charging stations. The OEB makes clear that its Board does not give formal approval of its staff bulletins, in part due to the Board's modest involvement in their development. As such, the views expressed in the Bulletin, and any other staff bulletin, are those of OEB staff alone and are not binding on the OEB.

If you have any questions please contact one of the authors.

[1] Section 71(1) of the OEB Act generally provides that a distributor shall not, except through one or more affiliates, carry on any business activity other than distributing electricity.

[2] https://www.applications.ene.gov.on.ca/ccap/products/CCAP_ENGLISH.pdf (see pg. 21)

By

John A.D. Vellone, Will McMillan, James C. Sidlofsky

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BLG Offices

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Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3
T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9
T 613.237.5160
F 613.230.8842

Vancouver
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200 Burrard Street
Vancouver, BC, Canada
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T 604.687.5744
F 604.687.1415

Montréal
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Suite 900
Montréal, QC, Canada
H3B 5H4
T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3
T 416.367.6000
F 416.367.6749

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