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**BY E-MAIL AND WEB POSTING**

## **BULLETIN**

**DATE ISSUED: July 7, 2016**

**TO: All Interested Parties**

**RE: Electric Vehicle Charging**

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**This Bulletin offers guidance in relation to whether the ownership or operation of an electric vehicle (EV)<sup>1</sup> charging station, and the selling of EV charging services from that facility, are licenseable activities under the *Ontario Energy Board Act, 1998 (OEB Act)*.**

### **1. Background**

On June 8, 2016, the Government of Ontario released its Climate Change Action Plan<sup>2</sup>, targeting a major reduction in greenhouse gas emissions in the near future. The Climate Change Action Plan states that increased electrification of the transportation system will be essential to achieving the reduction. Guided by the Climate Change Action Plan, the Province intends to take action that will help get more people into electric vehicles and lower greenhouse gases. In order to support this goal, the Plan

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<sup>1</sup> The term EV includes battery electric vehicles (BEV) which run on a large battery that can be charged from home or public charging stations, and plug-in hybrid electric vehicles (HEV) which combine an internal combustion engine with an electric motor and battery.

<sup>2</sup> *Ontario's Five Year Climate Change Action Plan 2016 - 2020* (<https://www.ontario.ca/page/climate-change-action-plan>).

sets out that the government will increase access to the infrastructure necessary to charge electric vehicles.<sup>3</sup>

The OEB has received several enquiries relating to the nature of the OEB's regulatory authority over the activity of EV charging. In this regard, and in the light of the Climate Change Action Plan and the public's increased awareness of the emerging EV market, OEB staff believes that guidance would be of assistance at this time to the industry and consumers.

This Bulletin sets out OEB staff's view that the **ownership or operation of an EV charging station, and the selling of EV charging services from that facility, do not constitute distribution or retailing**. OEB staff also notes that, for the purpose of this Bulletin, an EV charging station means a parking space equipped with electrical apparatus that is operated for the sole intended purpose of physically connecting with and charging an EV.

## **2. An EV Charging Station is not a Distribution System**

Section 57. (a) of the OEB Act requires a person to obtain a licence from the OEB prior to owning or operating a distribution system. In accordance with section 3 of the OEB Act: "distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less; a "distributor" means a person who owns or operates a distribution system; and, finally, a "distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose.

In OEB staff's view, an electrical apparatus or infrastructure owned or operated for the sole intended purpose of charging EVs is not a system for distributing electricity. Given that an EV charging station does not provide distribution capability for load-types other

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<sup>3</sup> Ontario's Five Year Climate Change Action Plan 2016 - 2020 (<https://www.ontario.ca/page/climate-change-action-plan>), pages 20-21.

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 developing this view, OEB staff considered the OEB's Decision and Order in the EB-2009-0180, 0181, 0182, 0183 (Streetlighting) proceeding<sup>4</sup>. In that decision, the OEB contemplated whether streetlighting system assets are distribution or non-distribution assets. Based on the definitions of "distribute" and "distribution system" in the OEB Act, the OEB found that an essential feature of a distribution asset is that the asset must be used to convey electricity and that the concept of distribution implies multiple recipients. Thus, the OEB found that the utility's assets which served only a streetlighting function, including such assets as luminaires, streetlight brackets and conductors contained on or within them, etc., would not be eligible for characterization as distribution assets. Similarly, in OEB staff's view, EV charging assets do not fall within the criteria established by the OEB for distribution assets since beyond the point of demarcation with the distribution system they do not provide distribution capability for loads other than EVs.

For these reasons, OEB staff holds the view that an EV charging station is not a distribution system and that a person who owns or operates such a facility will not require a distributor licence from the OEB. Moreover, since owners and operators of EV charging stations do not, in OEB staff's view, need to be licenced by the OEB, they are not subject to the OEB's codes, rules, or other regulatory requirements solely because of that ownership or operation.

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<sup>4</sup> *EB-2009-0180, 0181, 0182, 0183. Decision and Order dated February 11, 2010.* In this proceeding, Toronto Hydro-Electric System Limited and its affiliates sought, among other things, a declaration from the OEB that the street and expressway lighting assets (the SEL System) in the City of Toronto be deemed to be a distribution system. In that decision and order, the OEB found that only a subset of the SEL System could be characterized as "distribution assets". The OEB stated that the assets which served only a streetlighting function (i.e. those that were not intended to serve more than one end-use load) would not be considered part of the electricity distribution system.

### **3. Selling or Offering to Sell EV Charging Services is not Retailing**

Section 57. (d) of the OEB Act requires a person to obtain a licence from the OEB prior to retailing electricity. As set out in section 56 of the OEB Act, a “retailer” is a person who retails electricity and “retail”, with respect to electricity means to sell or offer to sell electricity to a consumer, to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity.

In OEB staff’s view, the act of selling or offering to sell an EV charging service is not retailing. Providers of EV charging services to the public do not simply sell or offer to sell a commodity. They provide customers with a complete service, a “vehicle refueling” service, including, at a minimum, the use of a parking space and a charging device, and which may also involve information technology letting EV drivers know where charging stations are located, whether they are occupied or available for use, and how fast a charge they can expect to receive (e.g. level 2 or level 3 charging)<sup>5</sup>.

OEB staff believes that the act of selling or offering to sell EV charging services is distinguishable from the act of electricity retailing. The latter activity can be viewed as being a proxy for the standard supply service that a consumer would otherwise receive from its distributor, whereas an EV charging service is not. Unlike with a standard supply service that consumers receive at their homes or businesses (from which the consumers can choose any manner in how to use it, i.e. heating, cooking, powering communications devices, etc.), the service procured from an EV charging station can only be used to refuel an EV. Conceptually, the same service could be provided by replacing a spent battery with a freshly charged battery, rather than providing access to equipment to charge the battery. In OEB staff’s view, the sale of an EV charging service appropriately falls into the category of other non-regulated, competitive products

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<sup>5</sup> Level 1 charging stations, installed primarily in homes, draw a small amount of power and charge vehicles over a long time (6-8 hrs). Level 2 charging stations, found in parking lots and workplaces, draw a little more energy and charge over a moderate amount of time (3-6 hrs). Level 3 or “quick charge” stations draw much more energy and are often located along highways to facilitate intercity travel.

and services identified on the OEB's website<sup>6</sup>, for which the owner or operator does not require an OEB retailer licence.

#### **4. Distributors Permitted to Own and Operate EV Charging Stations**

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. However, this section is also subject to certain exemptions. Specifically, section 71 (2) of the OEB Act states, in part, that a distributor may provide services that would assist the Government of Ontario in achieving its goals in electricity conservation including, among others, services related to “the promotion of electricity conservation and the efficient use of electricity” and “electricity load management”.

OEB staff believes that EV charging can help distributors optimize the use of assets by, among other things, having more demand response tools at their disposal and by promoting off peak charging. The participation of distributors in owning and operating EV charging facilities stations may help facilitate electricity load management and the efficient use of electricity. In OEB staff's view, it then follows that licensed electricity distributors are not precluded from owning and operating EV charging stations so long as the equipment provides for the management of load in keeping with the Government's goals for electricity conservation.

#### **5. Conclusion**

It is OEB staff's view that the **ownership or operation of an EV charging station, and the selling of EV charging services from that facility, do not constitute distribution or retailing**. The OEB regulates the distribution (delivery) and retailing (selling) of electricity; it does not regulate the end uses of electricity. In OEB staff's view,

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<sup>6</sup> The OEB webpage confirms the following as products and services not regulated by the OEB: hot water heaters, furnaces, thermostats, carbon credit/offset, energy audits, gasoline/oil, HVAC, propane, sewage, water (<http://www.ontarioenergyboard.ca/OEB/Consumers/Contact+Consumer+Relations>).

EV charging is an end use of electricity. A licence from the OEB is not required to engage in this activity and, as a result, the OEB's codes, rules and other regulatory requirements do not apply to it. Moreover, in OEB staff's view, owning and operating EV charging stations is an inherently competitive activity. Many different entities could (and do) offer this service and, given that a wide variety of possible business models exist<sup>7</sup>, consumers will likely have adequate choice when it comes to charging their EVs.<sup>8</sup>

Stakeholders in the EV market should also be aware that their business activities may fall under the authority of other regulatory bodies such as the [Electrical Safety Authority](#) and [Measurement Canada](#) if metered.

**The views expressed in this Bulletin are those of OEB staff and are not binding on the OEB. Any enquiries regarding this Bulletin should be directed to the OEB's Industry Relations hotline, at 416-440-7604 or [IndustryRelations@ontarioenergyboard.ca](mailto:IndustryRelations@ontarioenergyboard.ca)**

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<sup>7</sup> For example: (i) stores and restaurants may provide EV charging services for free in order to attract customers; (ii) parking lots and 'destination' businesses (e.g. hotels, tourist attractions) may offer EV charging services on a pay-per-use basis; (iii) businesses may make EV charging stations available for use by the public when they are not being used by their fleets or staff; and, (iv) gas stations and other businesses solely providing EV charging services may deploy networks of pay-per-use charging stations.

<sup>8</sup> Numerous smart phone apps are available to assist consumers in locating preferred public charging stations (e.g. fast chargers vs. slow chargers, free vs. pay-per-use).