



BULLETIN

DATE ISSUED: October 25, 2021

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

RE: Eligibility for net metering where the distribution customer operates but does not own the renewable energy generation facility

This Bulletin sets out Ontario Energy Board (OEB) staff's view that an electricity distribution customer can qualify as an "eligible generator" for net metering purposes where the customer operates but does not own a renewable energy generation facility.

1. Background

In Ontario, net metering is governed by O. Reg. 541/05 (Net Metering) made under the *Ontario Energy Board Act, 1998* (OEB Act). It is a billing arrangement whereby a customer of a distributor (referred to in the Regulation as an "eligible generator") earns electricity credits for the value of any excess renewable electricity generated by the customer behind the meter that the customer conveys into the distributor's distribution system.

OEB staff has received requests through the Innovation Sandbox for guidance about whether a customer of an electricity distributor can be considered an "eligible generator" and therefore able to participate in net metering if the customer operates but does not own the generation facility.

2. An eligible generator need not own the generation facility

The OEB Act defines "generator" as "a person who owns or operates a generation facility" (emphasis added). The use of "or" indicates that a person need not both own and operate a generation facility in order to be considered a "generator"; either one suffices. Indeed, it has been the practice of the OEB to issue separate generation licences in cases where the ownership and operation of a generation facility rests with different persons. In such situations, the operator will be the person who, under the terms of its legal arrangement with the third-party owner, determines how and when the

generation facility runs. In OEB staff's view, the operator may outsource the maintenance and other technical aspects of the day-to-day operation of the facility to a third party and still be considered the operator as long as it remains ultimately responsible for the operation.

A term used in a regulation has the same meaning as in the statute under which it was made.¹ It follows that an "eligible generator" within the meaning of the Regulation may be a person who operates an eligible generation facility but does not own it. Of course, regardless of whether the person is the operator and owner or solely the operator, all of the eligibility requirements set out in section 7 of the Regulation would need to be met in order to qualify for net metering.

Based on questions received through the Innovation Sandbox, OEB staff understands that some stakeholders have explored different types of arrangements between the distribution customer and the third-party owner in the net metering context, including leasing, lease-to-own and financing arrangements. To reiterate, as long as the distribution customer is the operator of the generation facility, the customer can qualify as an eligible generator. While the type of the agreement entered into between the distribution customer/operator and the third-party owner may vary, OEB staff's view is that it would need to assign to the distribution customer/operator the responsibility for making and adhering to the net metering agreement with the distributor. Under the Regulation, a net metering agreement is between a distributor and a distribution customer, and the customer may cancel the agreement on 90 days' written notice.

Regulatory requirements separate from the Regulation may also apply depending on the arrangements, for example, where the agreement stipulates that the distribution customer/operator is to pay the third-party owner on the basis of electricity generated (e.g. per kilowatt-hour). Although the analysis in all cases would depend on the facts, such arrangements may trigger the requirement for the third-party owner to obtain a retailer licence, and to comply with the *Energy Consumer Protection Act, 2010* if the customer is a low-volume consumer.

3. Conclusion

It is OEB staff's view that an electricity distribution customer can qualify as an "eligible generator" for net metering purposes where the customer operates but does not own a renewable energy generation facility.

The views expressed in this Bulletin are those of OEB staff and are not binding on a panel of Commissioners. Any questions regarding this Bulletin should be directed to the OEB's Industry Relations email address at IndustryRelations@oeb.ca.

¹ *Legislation Act, 2006*, s. 86.