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## **ELECTRIC UTILITIES ACT**

### Chapter E-5.1

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

## **Part 1 Interpretation, Application and Purpose**

### **Interpretation**

**1(1)** In this Act,

- (a) “affiliated retailer” has the meaning given to it in regulations made by the Minister under section 108;
- (b) “ancillary services” means those services required to ensure that the interconnected electric system is operated in a

manner that provides a satisfactory level of service with acceptable levels of voltage and frequency;

- (c) “Balancing Pool” means the corporation established by section 75;
- (d) “bill” or “billing” means an account for charges arising from the generation, transmission, distribution or sale of electricity;
- (e) “Board” means the Alberta Energy and Utilities Board established by the *Alberta Energy and Utilities Board Act*;
- (f) “conduct” includes acts and omissions;
- (g) “Crown” means the Crown in right of Alberta and includes an agent of the Crown;
- (h) “customer” means a person purchasing electricity for the person’s own use;
- (i) “dispatch” means a direction from the Independent System Operator to a market participant to cause, permit or alter the exchange of electric energy or ancillary services;
- (j) “distributed generation” means a generating unit that is interconnected with an electric distribution system;
- (k) “distribution access service” means the service required to transport electricity by means of an electric distribution system
  - (i) to customers, or
  - (ii) from distributed generation to the interconnected electric system,  
  
and includes any services the owner of the electric distribution system is required to provide by the Board or is required to provide under this Act or the regulations, but does not include the provision of electricity services to eligible customers under a regulated rate tariff;
- (l) “distribution tariff billing” means an account for distribution access service provided to a retailer or a regulated rate provider;
- (m) “electric distribution system” means the plant, works, equipment, systems and services necessary to distribute

electricity in a service area, but does not include a generating unit or a transmission facility;

- (n) “electric energy” means the capability of electricity to do work, measured in kilowatt hours;
- (o) “electric utility” means an isolated generating unit, a transmission facility or an electric distribution system that is used
  - (i) directly or indirectly for the public, or
  - (ii) to supply electricity to members of an association whose principal object is to supply electricity to its members, the owner of which
  - (iii) is required by this Act or the regulations to apply to the Board for approval of a tariff,
  - (iv) is permitted by this Act or the regulations to apply to the Board for approval of a tariff, and has applied for that approval, or
  - (v) passes a bylaw that has been approved by the Lieutenant Governor in Council under section 138,

but does not include an arrangement of conductors intended to distribute electricity solely on property of which a person is the owner or a tenant, for use solely by that person and solely on that property or a facility exempted by Board rules made under section 117;

- (p) “electricity” means electric energy, electric power, reactive power or any other electromagnetic effects associated with alternating current or high voltage direct current electric systems;
- (q) “electricity services” means the services associated with providing electricity to a person, including the following:
  - (i) the exchange of electric energy;
  - (ii) making financial arrangements to manage financial risk associated with the pool price;
  - (iii) distribution access service;
  - (iv) system access service;

- (v) ancillary services;
- (vi) billing;
- (vii) metering;
- (viii) performing load settlement;
- (ix) any other services specified in the regulations made by the Minister under section 115;
- (r) “eligible customer” has the meaning given to it in regulations made by the Minister under section 108;
- (s) “exchange” means to provide electric energy to or receive electric energy from the interconnected electric system;
- (t) “farm transmission costs”, in respect of an owner of an electric distribution system, means
  - (i) the proportion of the owner’s costs of supplying electricity on 25 000 volt lines to the service area boundaries of rural electrification associations that the total electricity supplied to rural electrification association members within those boundaries for farm and farm irrigation purposes bears to the total electricity supplied on those lines, and
  - (ii) an equivalent dollar amount per unit of electricity supplied by the electric distribution system to farm and farm irrigation customers who are not members of rural electrification associations;
- (u) “generating unit” means the component of a power plant that produces, from any source, electric energy and ancillary services, and includes a share of the following associated facilities that are necessary for the safe, reliable and economic operation of the generating unit, which may be used in common with other generating units:
  - (i) fuel and fuel handling equipment;
  - (ii) cooling water facilities;
  - (iii) switch yards;
  - (iv) other items;

- (v) “hour” means 60 minutes or any period of less than 60 minutes established as an hour in accordance with ISO rules;
- (w) “Independent System Operator” means the corporation established by section 7;
- (x) “industrial system” has the meaning given to it in the *Hydro and Electric Energy Act*;
- (y) “information systems” means systems for the collection, storage and dissemination of data that identify individual customer consumption of electricity from the interconnected electric system;
- (z) “interconnected electric system” means all transmission facilities and all electric distribution systems in Alberta that are interconnected, but does not include an electric distribution system or a transmission facility within the service area of the City of Medicine Hat or a subsidiary of the City, unless the City passes a bylaw that is approved by the Lieutenant Governor in Council under section 138;
- (aa) “interval meter” means a meter that
  - (i) measures, at intervals of 60 minutes or less, the amount of electricity consumed, and
  - (ii) satisfies the standards for revenue collection under the *Electricity and Gas Inspection Act* (Canada) and the *Weights and Measures Act* (Canada);
- (bb) “isolated generating unit” means a generating unit that is determined to be an isolated generating unit in accordance with the regulations made by the Minister under section 99;
- (cc) “load settlement” means the process of determining the hourly consumption of electric energy of each customer in Alberta and providing that information to the Independent System Operator, retailers and regulated rate providers in order to identify responsibility for purchases of electric energy exchanged through the power pool;
- (dd) “market” means any type of market through or under which an offer, purchase, sale, trade or exchange of electricity, electric energy, electricity services or ancillary services takes place in relation to the production or consumption of electricity, electric energy, electricity services or ancillary services;

- (ee) “market participant” means any person that supplies, generates, transmits, distributes, trades, exchanges, purchases or sells electricity, electric energy, electricity services or ancillary services;
- (ff) “Market Surveillance Administrator” means the corporation established by section 42;
- (gg) “metering” means the purchase, installation, operation and reading of a meter that measures and records the amount of electricity consumed by a customer;
- (hh) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (ii) “municipality” means a city, town, village, summer village, municipal district or specialized municipality, a town under the *Parks Towns Act* or a municipality formed by special Act, and includes a Metis settlement established under the *Metis Settlements Act*;
- (jj) “owner”, in respect of a generating unit, a transmission facility or an electric distribution system, means the owner, operator, manager or lessee of that unit, facility or system, or any person who is acting as an agent for the owner, operator, manager or lessee, and in the event that one of those persons becomes bankrupt or insolvent, includes any trustee, liquidator or receiver appointed in respect of the bankruptcy or insolvency;
- (kk) “person” includes an individual, unincorporated entity, partnership, association, corporation, trustee, executor, administrator or legal representative;
- (ll) “pool price” means the price for each hour established and reported by the Independent System Operator, in accordance with the ISO rules, for electric energy exchanged through the power pool;
- (mm) “power pool” means the scheme operated by the Independent System Operator for
  - (i) exchange of electric energy, and
  - (ii) financial settlement for the exchange of electric energy;

- (nn) “power purchase arrangement” means a power purchase arrangement included in Alberta Regulation AR 175/2000, but does not include
  - (i) the power purchase arrangement that applies to the H.R. Milner generating unit;
  - (ii) the power purchase arrangement that applies to the Sturgeon generating units;
  - (iii) a power purchase arrangement that expires in accordance with the unit effective term completion date specified in the power purchase arrangement;
  - (iv) a power purchase arrangement that is terminated under section 15.2 of the power purchase arrangement;
  - (v) a power purchase arrangement that is terminated by the Balancing Pool;
- (oo) “rate classification customer” has the meaning given to it in regulations made by the Minister under section 108 or in a regulated rate tariff;
- (pp) “rates” means prices, rates, tolls and charges;
- (qq) “regulated rate provider” means the owner of an electric distribution system, or a person authorized by the owner that provides electricity services to eligible customers in the owner’s service area under a regulated rate tariff;
- (rr) “record” includes
  - (i) information or data regardless of its physical form or characteristics;
  - (ii) information or data in a form that can produce sound, with or without a visual form;
  - (iii) information or data in electronic, magnetic or mechanical storage;
  - (iv) electronic data transmission signals;
  - (v) any other thing that is capable of being represented or reproduced visually or by sound, or both;
  - (vi) anything in which information or data is stored, including software and any mechanism or device that produces the information or data;

- (ss) “regulations” means
  - (i) regulations made under this Act;
  - (ii) Alberta Regulation AR 175/2000;
  - (iii) regulations continued under this Act by a regulation made by the Minister under section 154;
- (tt) “retail electricity services” means electricity services provided directly to a customer but does not include electricity services provided to eligible customers under a regulated rate tariff;
- (uu) “retailer” means a person who sells or provides retail electricity services;
- (vv) “rural electrification association” means an association under the *Rural Utilities Act* that has as its principal object the supply of electricity to its members;
- (ww) “service area” means the area determined under the *Hydro and Electric Energy Act* from time to time in which
  - (i) the owner of an electric distribution system may distribute electricity, or
  - (ii) a rural electrification association may distribute electricity to its members;
- (xx) “service area of the municipality” means the service area for the electric distribution system owned by a municipality or a subsidiary of a municipality;
- (yy) “system access service” means the service obtained by market participants through a connection to the transmission system, and includes access to exchange electric energy and ancillary services;
- (zz) “tariff” means a document that sets out
  - (i) rates, and
  - (ii) terms and conditions;
- (aaa) “terms and conditions”, in respect of a tariff, means the standards, classifications, regulations, practices, measures and terms and conditions that apply to services provided under the tariff;

- (bbb) “transmission facility” means an arrangement of conductors and transformation equipment that transmits electricity from the high voltage terminal of the generation transformer to the low voltage terminal of the step down transformer operating phase to phase at a nominal high voltage level of more than 25 000 volts to a nominal low voltage level of 25 000 volts or less, and includes
- (i) transmission lines energized in excess of 25 000 volts,
  - (ii) insulating and supporting structures,
  - (iii) substations, transformers and switchgear,
  - (iv) operational, telecommunication and control devices,
  - (v) all property of any kind used for the purpose of, or in connection with, the operation of the transmission facility, including all equipment in a substation used to transmit electric energy from
    - (A) the low voltage terminal,
    - to
    - (B) electric distribution system lines that exit the substation and are energized at 25 000 volts or less,
- and
- (vi) connections with electric systems in jurisdictions bordering Alberta,
- but does not include a generating unit or an electric distribution system;
- (ccc) “transmission system” means all transmission facilities in Alberta that are part of the interconnected electric system;
- (ddd) “tribunal” means a tribunal appointed under section 61.
- (2)** A reference in this Act to
- (a) “ISO bylaws” means bylaws made by the Independent System Operator under section 10;
  - (b) “ISO fees” means the fees established by the Independent System Operator under section 21;

- (c) “ISO order” means an order made by the Independent System Operator under section 22;
- (d) “ISO rules” means the rules made by the Independent System Operator under section 19 or 20;
- (e) “ISO tariff” means the tariff prepared by the Independent System Operator under section 30 that has been approved by the Board.

**(3)** For the purpose of determining whether a corporation is a subsidiary of another corporation under this Act or the regulations, section 2(4) of the *Business Corporations Act* applies.

**(4)** For the purposes of this Act, the “service area of the City of Medicine Hat” or “service area of the City” means

- (a) the service area for the electric distribution system owned by the City of Medicine Hat or a subsidiary of the City on the date this section comes into force and includes any subsequent amendments made in accordance with section 29 of the *Hydro and Electric Energy Act*,
- (b) any transmission facilities owned by the City of Medicine Hat or a subsidiary of the City that are located outside the City’s service area described in clause (a) and that are used to provide service to customers within the City’s service area described in clause (a),
- (c) any plant, works, equipment and systems owned by the City of Medicine Hat or a subsidiary of the City that are located outside the City’s service area described in clause (a) and that are used to provide distribution access service to customers within the City’s service area described in clause (a),
- (d) any properties located outside the City’s service area described in clause (a) to which the City or a subsidiary of the City provides distribution access service on the date this section comes into force, and any plant, works, equipment, systems and services necessary to provide distribution access service to those properties, and
- (e) any properties to which the City of Medicine Hat or a subsidiary of the City is authorized to provide distribution access service pursuant to an approval by the Board under section 26 of the *Hydro and Electric Energy Act*, and any plant, works, equipment and systems owned by the City of

Medicine Hat or a subsidiary of the City necessary to serve those properties.

**Exemptions from the Act**

**2(1)** This Act does not apply to

- (a) electric energy produced in the service area of the City of Medicine Hat
  - (i) by the City or a subsidiary of the City and consumed in that service area, or
  - (ii) by generating units that produce electric energy under contract to the City or to a subsidiary of the City and consumed in that service area,

unless the City passes a bylaw that is approved by the Lieutenant Governor in Council under section 138;

- (b) electric energy produced on property of which a person is the owner or a tenant, and consumed solely by that person and solely on that property;
- (c) electric energy produced by the following generating units located in the City of Calgary, to the extent of the capacity of those units on January 1, 1996:
  - (i) Glenmore water treatment facility;
  - (ii) Bearspaw water treatment facility;
  - (iii) Turbo Expander;
- (d) electric energy exempted by the Board in accordance with rules made under section 117.

**(2)** The exemptions under subsection (1)(a) and sections 37(2)(a), 100, 109 and 153(1) do not apply if the City of Medicine Hat or a subsidiary of the City does not provide the information or statements required by a regulation made under section 142(1)(h).

**(3)** The exemption under subsection (1)(b) applies whether or not the owner or tenant is the owner of the generating unit producing the electric energy.

**Effect of the Act****3(1)** Nothing in this Act requires

- (a) any person to transfer or divest itself of any property owned by it, or
- (b) any change in the boundaries of the service area of an electric distribution system.

**(2)** Agreements existing when this Act or any portion of this Act or any Act that amends this Act comes into force relating to the generation, transmission, distribution, offer, purchase, sale, trade or exchange of electricity are preserved unless subsection (3) applies.

**(3)** An agreement existing when this Act or any portion of this Act or any Act that amends this Act comes into force and that is expressly or by necessary implication inconsistent with this Act or the Act that amends this Act is deemed to be amended to the extent necessary to make the agreement consistent with this Act or the Act that amends this Act.

**Immunity for the Crown**

**4** No action may be brought against the Crown claiming compensation for any real or perceived loss or damage resulting from the coming into force or the implementation of

- (a) the *Electric Utilities Act*, SA 1995 cE-5.5, the *Electric Utilities Amendment Act, 1998*, SA 1998 c13, or the *Electric Utilities Act*, RSA 2000 cE-5, or any regulations made under those Acts, or
- (b) this Act or amendments to this Act or any regulations made or purported to be made under those Acts.

**Purposes of the Act**

**5** The purposes of this Act are

- (a) to provide an efficient Alberta electric industry structure including independent, separate corporations to carry out the responsibilities of the Independent System Operator, the Market Surveillance Administrator and the Balancing Pool, and to set out the powers and duties of those corporations;
- (b) to provide for a competitive power pool so that an efficient market for electricity based on fair and open competition can develop, where all persons wishing to exchange electric

energy through the power pool may do so on non-discriminatory terms and may make financial arrangements to manage financial risk associated with the pool price;

- (c) to provide for rules so that an efficient market for electricity based on fair and open competition can develop in which neither the market nor the structure of the Alberta electric industry is distorted by unfair advantages of government-owned participants or any other participant;
- (d) to continue a flexible framework so that decisions of the electric industry about the need for and investment in generation of electricity are guided by competitive market forces;
- (e) to enable customers to choose from a range of services in the Alberta electric industry, including a flow-through of pool price and other options developed by a competitive market, and to receive satisfactory service;
- (f) to continue the sharing, among all customers of electricity in Alberta, of the benefits and costs associated with the Balancing Pool;
- (g) to continue the framework established for power purchase arrangements;
- (h) to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.

#### **Expectations of market participants**

**6** Market participants are to conduct themselves in a manner that supports the fair, efficient and openly competitive operation of the market.

## **Part 2 Independent System Operator and Transmission**

### **Division 1 Corporate Organization**

#### **ISO established**

- 7(1)** There is hereby established a corporation to be known as the Independent System Operator.
- (2)** The Independent System Operator consists of its members, who are appointed under section 8.
- (3)** The Independent System Operator is not a Provincial corporation for the purposes of the *Financial Administration Act*, the *Auditor General Act* or any other enactment.
- (4)** For the purposes of the *Government Accountability Act*, the Independent System Operator is not part of the ministry, as defined in that Act, of any Minister of the Government of Alberta.
- (5)** The Independent System Operator is not an agent of the Crown.

#### **Appointment of ISO members**

- 8(1)** The Minister must appoint as members of the Independent System Operator not more than 9 individuals who, in the opinion of the Minister,
- (a) are independent of any person who has a material interest in the Alberta electric industry, and
  - (b) will enhance the performance of the Independent System Operator in exercising its powers and carrying out its duties, responsibilities and functions.
- (2)** The Minister must designate one of the members of the Independent System Operator as chair.
- (3)** In accordance with ISO bylaws, the members of the Independent System Operator
- (a) must recommend to the Minister individuals to be appointed as members for all appointments after the appointment of the first members, and

- (b) may recommend to the Minister an individual to be designated as chair when a chair needs to be designated.
- (4) The members of the Independent System Operator must oversee the business and affairs of the Independent System Operator.
- (5) The term of office of a member is for not more than 3 years.
- (6) A member is eligible to be appointed for not more than 3 terms of office.
- (7) A member continues to hold office after the expiry of the member's term until the member is reappointed, the member's successor is appointed or a period of 3 months has elapsed, whichever occurs first.
- (8) A member is eligible to receive the reasonable remuneration and expenses set out in the ISO bylaws.
- (9) In carrying out any duty, responsibility or function as a member of the Independent System Operator, the member must
  - (a) act honestly, in good faith and in the public interest,
  - (b) avoid conflicts of interest, and
  - (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

**Natural person powers**

- 9(1)** Subject to this Act and the regulations, the Independent System Operator has the rights, powers and privileges of a natural person.
- (2) Except when the power to delegate is restricted by this Act, by regulations made under section 41 or 142 or by ISO bylaws, the Independent System Operator may delegate any power or duty conferred or imposed on it under this or any other enactment
  - (a) to any of the members, officers or employees of the Independent System Operator, or
  - (b) to any other qualified person the Independent System Operator considers appropriate.

(3) The Independent System Operator shall not delegate the power to approve annual financial statements or its power to make bylaws.

(4) The Independent System Operator shall not, without the consent of the Minister, delegate any of its powers, duties, responsibilities or functions to a regional transmission organization or enter into any agreement that has that effect.

(5) The Independent System Operator may enter into arrangements or agreements with responsible authorities in jurisdictions outside Alberta respecting the operations, standards and business practices relating to the interconnected electric system

(a) in Alberta, or

(b) in conjunction with the operation of electric systems outside Alberta.

(6) The Independent System Operator may not own or hold an interest in any transmission facility, electric distribution system or generating unit.

### **Bylaws**

**10(1)** The Independent System Operator must make bylaws governing its business and affairs.

(2) In its bylaws, the Independent System Operator

(a) must establish

(i) a code of conduct for its members, officers, employees and agents,

(ii) criteria and a process for recommending the appointment of members and designation of an individual as chair when an appointment or designation is needed,

(iii) the reasonable remuneration and expenses members are eligible to receive, and

(iv) criteria relating to the removal of members and the process to be followed to recommend to the Minister the removal of a member,

and

(b) may establish

- (i) the number of its members that constitutes a quorum at meetings of the Independent System Operator, and
- (ii) rules respecting the number of its members that is required to carry out any decision in order for that decision to bind all of its members and to constitute a decision of the Independent System Operator.

**(3)** The Independent System Operator must make its bylaws available to the public.

#### **Chief executive officer**

**11** The Independent System Operator must appoint a qualified individual to act as its chief executive officer.

#### **Auditor**

**12** The Independent System Operator must appoint an independent auditor to review and audit its financial statements.

#### **Committees**

**13** If the Independent System Operator establishes a committee to consult with market participants or other persons, it must

- (a) set up a process for appointing individuals to the committee,
- (b) describe the committee's mandate, and
- (c) specify the reasonable remuneration and expenses members of the committee may receive for committee work.

#### **ISO budget**

**14(1)** The Independent System Operator must prepare a budget for each fiscal year setting out

- (a) the estimated expenditures, costs and expenses of the Independent System Operator to carry out its powers, duties, responsibilities and functions, which may include expenditures for capital assets allocated over the expected useful life of the asset,

- (b) the aggregate estimated expenditures, costs and expenses in the approved budget of the Market Surveillance Administrator,
  - (c) its estimated revenue from ISO fees, and
  - (d) its estimated revenue from the ISO tariff.
- (2) The Independent System Operator may amend its budget.
- (3) The Independent System Operator must be managed so that, on an annual basis, no profit or loss results from its operation.

### **Reporting**

- 15(1)** The Independent System Operator must, within 120 days after the end of its fiscal year, provide to the Minister an annual report
- (a) reporting on its business and affairs in the fiscal year, and
  - (b) containing its audited financial statements for the fiscal year.
- (2) After providing the annual report to the Minister, the Independent System Operator must make it available to the public.
- (3) The Independent System Operator must provide to the Minister any other reports and information relating to its duties, responsibilities and functions that the Minister requests.

## **Division 2 Independent System Operator Duties and Authority**

### **Duty to act responsibly**

**16** The Independent System Operator must exercise its powers and carry out its duties, responsibilities and functions in a timely manner that is fair and responsible to provide for the safe, reliable and economic operation of the interconnected electric system and to promote a fair, efficient and openly competitive market for electricity.

### **Duties of Independent System Operator**

**17** The Independent System Operator has the following duties:

- (a) to operate the power pool in a manner that promotes the fair, efficient and openly competitive exchange of electric energy;
- (b) to facilitate the operation of markets for electric energy in a manner that is fair and open and that gives all market participants wishing to participate in those markets and to exchange electric energy a reasonable opportunity to do so;
- (c) to determine, according to relative economic merit, the order of dispatch of electric energy and ancillary services in Alberta and from scheduled exchanges of electric energy and ancillary services between the interconnected electric system in Alberta and electric systems outside Alberta, to satisfy the requirements for electricity in Alberta;
- (d) to carry out financial settlement for all electric energy exchanged through the power pool at the pool price unless this Act or the regulations made by the Minister under section 41 provide otherwise;
- (e) to manage and recover the costs of transmission line losses;
- (f) to manage and recover the costs for the provision of ancillary services;
- (g) to provide system access service on the transmission system and to prepare an ISO tariff;
- (h) to direct the safe, reliable and economic operation of the interconnected electric system;
- (i) to assess the current and future needs of market participants and plan the capability of the transmission system to meet those needs;
- (j) to make arrangements for the expansion of and enhancement to the transmission system;
- (k) to collect, store and disseminate information relating to the current and future electricity needs of Alberta and the capacity of the interconnected electric system to meet those needs, and make that information available to the public;
- (l) to regulate and administer load settlement;
- (m) to perform any other function or engage in any activity the Independent System Operator considers necessary or advisable to exercise its powers and carry out its duties, responsibilities and functions under this Act and regulations.

**Power pool**

**18(1)** The Independent System Operator must operate the power pool in a manner that is fair, efficient and open to all market participants exchanging or wishing to exchange electric energy through the power pool and that gives all market participants a reasonable opportunity to do so.

**(2)** All electric energy entering or leaving the interconnected electric system must be exchanged through the power pool unless regulations made under section 41, section 99 or section 142 provide otherwise.

**(3)** A person shall not intentionally cause or permit electric energy or ancillary services to enter or leave the interconnected electric system except in accordance with ISO rules.

**(4)** The Independent System Operator must establish and report the pool price, which shall not include any portion of the ISO fees, and make the hourly pool price available to the public.

**Direct sales agreements and forward contracts**

**19(1)** In this section,

- (a) “direct sales agreement” means an agreement relating to the sale or purchase of electric energy in accordance with the terms agreed to by the parties to the agreement, but does not include a forward contract;
- (b) “forward contract” means an agreement relating to the sale or purchase of electric energy
  - (i) that is tradeable on a forward exchange, and
  - (ii) that provides for the future delivery of electric energy;
- (c) “forward exchange” means an organization that is in the business of operating a market for buying and selling forward contracts.

**(2)** Exchange of electric energy under a direct sales agreement or a forward contract must be undertaken in accordance with ISO rules, including rules

- (a) setting out the requirements, including the information to be provided to the Independent System Operator, concerning a direct sales agreement or forward contract,

- (b) authorizing persons other than the Independent System Operator to make financial settlement for electric energy sold or purchased under a direct sales agreement or forward contract,
- (c) authorizing that financial settlement may be at a price other than the pool price for electric energy sold or purchased under a direct sales agreement or forward contract, and
- (d) relating to the curtailment and certainty of supply of electric energy sold or purchased under a direct sales agreement or forward contract.

(3) A rule under subsection (2) shall not require a person buying or selling electric energy under a direct sales agreement or forward contract to disclose to the Independent System Operator information relating to the price of electric energy sold or purchased under the agreement or contract.

#### **ISO rules**

**20(1)** The Independent System Operator may make rules respecting

- (a) the practices and procedures of the Independent System Operator;
- (b) the operation of the power pool and the exchange of electric energy through the power pool;
- (c) the operation of the interconnected electric system;
- (d) the provision of ancillary services;
- (e) planning the transmission system, including criteria and standards for the reliability and adequacy of the transmission system;
- (f) the processes for expansion and enhancement of the transmission system;
- (g) the procedures to be observed in emergencies relating to the operation of the interconnected electric system;
- (h) load settlement, including
  - (i) the conduct of load settlement by market participants;

- (ii) the establishment of processes, procedures, standards, reports and controls required to determine the hourly allocation of electric energy to sites and to customers;
  - (iii) the determination, collection and storage of site, customer, metering and other data in order to provide necessary measurement data;
  - (iv) the development and use of customer load profiles to determine the hourly allocation of electric energy to sites that do not have interval meters;
  - (v) the transfer of data among market participants;
  - (vi) approval of professional and other costs relating to the development and implementation of the rules and by whom the costs are to be paid;
  - (vii) incentives for efficient performance of load settlement;
  - (i) direct sales agreements and forward contracts as defined in section 19(1);
  - (j) the granting of exemptions from the rules, and setting out the process for obtaining an exemption;
  - (k) procedures for resolving disputes between the Independent System Operator and market participants, which may include arbitration under the *Arbitration Act*;
  - (l) any other matter the Independent System Operator considers necessary or advisable to carry out its duties, responsibilities and functions under this Act and the regulations.
- (2)** The Independent System Operator must make its rules available to the public except for those rules that the Independent System Operator considers not to be in the public interest to disclose publicly, in which case an explanation for the non-disclosure of those rules must be given.
- (3)** A market participant must comply with ISO rules.

**ISO fees**

**21(1)** The Independent System Operator must establish and charge fees payable by market participants

- (a) for the exchange of electric energy through the power pool,

- (b) to pay for the aggregate expenditures, costs and expenses shown in the approved budget of the Market Surveillance Administrator and any approved amendment to the budget, and
  - (c) to pay for the costs and expenses of other powers, duties, responsibilities and functions of the Independent System Operator, except costs and expenses recovered under the ISO tariff.
- (2) The fees must be just and reasonable and may be varied from time to time.
- (3) A market participant who is charged a fee by the Independent System Operator must pay the fee.
- (4) A market participant charged a fee by the Independent System Operator may make a complaint to the Board under section 25.
- (5) A fee charged by the Independent System Operator is a debt owing by the market participant to the Independent System Operator and in default of payment may be recovered by the Independent System Operator by an action in debt.
- (6) The Independent System Operator must maintain a current schedule of its fees and make the schedule available to the public.

#### **ISO orders**

**22(1)** If the Independent System Operator is satisfied that a market participant has contravened an ISO rule or failed to pay an ISO fee, the Independent System Operator may, by order, do one or more of the following:

- (a) impose an administrative penalty on the market participant of not more than \$100 000 a day for each day on which a contravention occurs or continues;
- (b) deny, suspend, restrict or terminate the right of a market participant to exchange electric energy through the power pool or to participate in any other market operated by the Independent System Operator;
- (c) impose another sanction that the Independent System Operator considers appropriate;
- (d) order compliance with the ISO rule or payment of an ISO fee.

- (2) When making an order, the Independent System Operator may take into consideration any failure or refusal of a market participant to co-operate with the Independent System Operator.
- (3) A market participant who is the subject of an ISO order may make a complaint to the Board under section 25.
- (4) An administrative penalty imposed by the Independent System Operator must be paid to the Balancing Pool.
- (5) The Independent System Operator must establish and maintain a current schedule of administrative penalties that it may impose and make the schedule available to the public.

#### **Enforcement of ISO orders**

- 23(1)** Subject to the right to make a complaint under section 25, if a person fails to pay an administrative penalty in accordance with the order imposing it, the Independent System Operator may file a copy of the order with the clerk of the Court of Queen's Bench, and on being filed, the order has the same force and effect and may be enforced by the Independent System Operator as if it were a judgment or order of the Court.
- (2) Subject to the right to make a complaint under section 25, the Independent System Operator may apply to the Court of Queen's Bench to enforce an ISO order, other than an order to pay an administrative penalty, on giving notice of the application to the person against whom enforcement is sought, in accordance with the *Alberta Rules of Court*.
- (3) An application under subsection (2) must be accompanied with the original ISO order or a certified copy of it.
- (4) The Court of Queen's Bench may give judgment enforcing an ISO order unless
  - (a) the order is the subject of complaint under section 25 that has not been decided,
  - (b) the order is the subject of judicial proceedings that put it in question, or
  - (c) the order is not capable of enforcement in law.

**Offence for non-compliance with ISO orders**

**24(1)** A person who fails to comply with an ISO order is guilty of an offence and is liable to a fine of not more than \$100 000 a day for each day during which non-compliance continues.

**(2)** In addition to a fine under this section, the court may order the market participant to pay to the Balancing Pool any administrative penalty imposed on it by the ISO order.

**Division 3  
Recourse to the Board****Complaints to the Board**

**25(1)** Any person may make a written complaint to the Board about

- (a) an ISO rule,
- (b) an ISO fee, or
- (c) an ISO order.

**(2)** A complaint about an ISO fee or an ISO order must be made within 60 days of the date the market participant receives notice of the fee or order.

**(3)** Before dealing with any complaint, the Board may require the person making the complaint and the Independent System Operator to attempt to negotiate a settlement of the matter or participate in a dispute resolution process selected by the Board.

**(4)** The Board may, by giving written notice with reasons to the person making the complaint, decline to investigate a matter or hold a hearing, or terminate an investigation or hearing, if the Board considers

- (a) the complaint is frivolous, vexatious, trivial or otherwise does not warrant investigation or a hearing;
- (b) the complaint or the substance of it has been referred to, should be referred to, or is the subject of an investigation by, the Market Surveillance Administrator;
- (c) the complaint or the substance of it has been investigated by the Market Surveillance Administrator, has been the subject of a tribunal hearing or has been the subject of a tribunal order;

(d) the subject-matter of the complaint is under the jurisdiction of another authority.

**(5)** Unless the Board otherwise orders, a complaint under this section does not relieve the person making the complaint from the obligation

(a) to pay an ISO fee pending a decision of the Board, or

(b) to comply with an ISO order or ISO rule pending a decision of the Board.

**(6)** If the Board decides to hear the complaint, the Board may, by written decision giving reasons,

(a) determine the justness and reasonableness of

(i) an ISO fee, or

(ii) an ISO order

and may confirm, change or revoke the fee or order;

(b) order the Independent System Operator to revoke or change a provision of an ISO rule that, in the Board's opinion, is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this Act or the regulations;

(c) dismiss the complaint;

(d) direct the Independent System Operator to reimburse a market participant any fee paid to the Independent System Operator;

(e) direct the Balancing Pool to reimburse a market participant any administrative penalty paid to the Balancing Pool in accordance with an ISO order.

#### **Complaints about ISO**

**26(1)** Any person may make a written complaint to the Board about the conduct of the Independent System Operator.

**(2)** The Board must refuse the complaint, giving reasons for the refusal, if the Board is satisfied that

- (a) the substance of the complaint has been or should be referred to the Market Surveillance Administrator for investigation,
- (b) the complaint deals with a matter the substance of which is before or has been dealt with by a tribunal, or
- (c) the complaint is frivolous, vexatious, trivial or otherwise does not warrant investigation or a hearing.

**(3)** The person making the complaint and the Independent System Operator must, if the Board so requires, participate in a dispute resolution process selected by the Board, which may include arbitration under the *Arbitration Act*.

#### **Security measures**

**27** The Independent System Operator may develop plans and implement measures for the purpose of ensuring that the Independent System Operator is able to exercise its powers and carry out its duties, responsibilities and functions in a manner that is secure against the threat of terrorist activity as that term is defined in the *Criminal Code* (Canada).

### **Division 4 Transmission Responsibilities of the Independent System Operator**

#### **ISO sole provider of system access service**

**28** The Independent System Operator is the sole provider of system access service on the transmission system.

#### **Providing system access service**

**29** The Independent System Operator must provide system access service on the transmission system in a manner that gives all market participants wishing to exchange electric energy and ancillary services a reasonable opportunity to do so.

#### **ISO tariff**

**30(1)** The Independent System Operator must submit to the Board, for approval under Part 9, a single tariff setting out

- (a) the rates to be charged by the Independent System Operator for each class of system access service, and

- (b) the terms and conditions that apply to each class of system access service provided by the Independent System Operator to persons connected to the transmission system.

**(2)** The rates to be charged by the Independent System Operator for each class of service must reflect the prudent costs that are reasonably attributable to each class of system access service provided by the Independent System Operator, and the rates must

- (a) be sufficient to recover
  - (i) the amounts to be paid under the approved tariff of the owner of each transmission facility,
  - (ii) the amounts to be paid to the owner of a generating unit in circumstances in which the Independent System Operator directs that a generating unit must continue to operate, and the costs to make prudent arrangements to manage the financial risk associated with those amounts,
  - (iii) farm transmission costs, and
  - (iv) any other prudent costs and expenses the Board considers appropriate,
- (b) either be sufficient to recover the annualized amount paid to the Balancing Pool under section 82(7), or if the Independent System Operator receives an annualized amount under section 82(7), reflect that amount, and
- (c) include any other costs, expenses and revenue determined in accordance with the regulations made by the Minister under section 99.

**(3)** The rates set out in the tariff

- (a) shall not be different for owners of electric distribution systems, customers who are industrial systems or a person who has made an arrangement under section 101(2) as a result of the location of those systems or persons on the transmission system, and
- (b) are not unjust or unreasonable simply because they comply with clause (a).

**(4)** The Independent System Operator may recover the costs of transmission line losses and the costs of arranging provision of ancillary services acquired from market participants by

- (a) including either or both of those costs in the tariff, in addition to the amounts and costs described in subsection (2), in which case the Board must include in the tariff the additional costs it considers to be prudent, or
- (b) establishing and charging ISO fees for either or both of those costs.

**Duty to comply with ISO tariff**

**31** A market participant who obtains system access service must

- (a) pay the Independent System Operator the rates prescribed in the ISO tariff, and
- (b) comply with the terms and conditions of the tariff.

**Payments by ISO**

**32** The Independent System Operator must

- (a) pay the rates set out in the approved tariff of the owner of each transmission facility;
- (b) pay incremental generation costs that are owing to the owner of a generating unit if the Independent System Operator directs that a generating unit must continue to operate, and make prudent arrangements to manage the financial risk associated with those costs;
- (c) pay farm transmission costs;
- (d) pay isolated generation costs determined in accordance with the regulations made by the Minister under section 99;
- (e) pay or collect the annualized amount in accordance with section 82(7);
- (f) pay the prudent costs for other services acquired from a market participant related to the provision of system access service.

**Transmission system planning**

**33** The Independent System Operator must forecast the needs of market participants and develop plans for the transmission system to provide efficient, reliable and non-discriminatory system access

service and the timely implementation of required transmission system expansions and enhancements.

**Alleviation of constraints or other conditions on transmission system**

**34(1)** When the Independent System Operator determines that an expansion or enhancement of the capability of the transmission system is required to meet the needs of market participants, the Independent System Operator must prepare and submit to the Board for approval a needs identification document that

- (a) describes the constraint or condition affecting the operation or performance of the transmission system and indicates the means by which or the manner in which the constraint or condition could be alleviated,
- (b) describes a need for improved efficiency of the transmission system, including means to reduce losses on the interconnected electric system, or
- (c) describes a need to respond to requests for system access service.

**(2)** On its own initiative or in response to views expressed by the Board, the Independent System Operator may amend a needs identification document submitted to the Board for approval.

**(3)** The Board may

- (a) approve the needs identification document,
- (b) refer the needs identification document back to the Independent System Operator with directions or suggestions for changes or additions, or
- (c) refuse to approve the needs identification document.

**Transmission facility directions and proposals**

**35(1)** On receipt of Board approval of a needs identification document the Independent System Operator, in accordance with that approval, may

- (a) direct the owner of a transmission facility to submit, for Board approval under the *Hydro and Electric Energy Act*, a transmission facility proposal to meet the need identified, or

(b) request market participants to submit, for approval by the Independent System Operator, a proposal to meet the need identified.

(2) The owner of a transmission facility must comply with a direction from the Independent System Operator under subsection (1) unless the owner gives written notice to the Independent System Operator, giving reasons, that

- (a) a real and substantial risk of damage to its transmission facility could result if the direction were complied with,
- (b) a real and substantial risk to the safety of its employees or the public could result if the direction were complied with, or
- (c) a real and substantial risk of undue injury to the environment could result if the direction were complied with.

(3) Subject to subsection (2), on receiving a direction the owner of a transmission facility must prepare an application to meet the requirements or objectives of the direction and apply to the Board for approval under the *Hydro and Electric Energy Act*.

#### **Other proposals to alleviate transmission constraints**

**36(1)** On receipt of a proposal by a market participant to meet a need identified in the needs identification document, the Independent System Operator may

- (a) approve the proposal, with or without conditions or modification, or
- (b) refuse the proposal.

(2) The Independent System Operator may specify the time within which the person who obtains approval of a proposal must apply to the Board for approval under the *Hydro and Electric Energy Act*, if approval is required under that Act.

#### **Transmission facility owner's tariff**

**37(1)** Each owner of a transmission facility must submit to the Board for approval a tariff setting out the rates to be paid by the Independent System Operator to the owner for the use of the owner's transmission facility.

- (2) Subsection (1) does not apply to
- (a) the City of Medicine Hat with respect to transmission facilities in the service area of the City, or
  - (b) the owners of transmission facilities to which section 153 applies during the period that the rates referred to in section 153 have effect.

#### **Joint tariff**

**38** One or more owners of transmission facilities may agree with the Independent System Operator to prepare and submit to the Board for approval one joint tariff that sets out the rates and terms and conditions applicable to the Independent System Operator and the owner.

#### **Duties of transmission facility owners**

**39(1)** Each owner of a transmission facility must operate and maintain the transmission facility in a manner that is consistent with the safe, reliable and economic operation of the interconnected electric system.

(2) Each owner of a transmission facility must, in a timely manner, assist the Independent System Operator in any manner to enable the Independent System Operator to carry out its duties, responsibilities and functions.

(3) Each owner of a transmission facility must

- (a) establish, in conjunction with owners of electric distribution systems, procedures and systems for load shedding in emergencies;
- (b) provide the Independent System Operator in a timely manner with descriptions, ratings and operating restrictions relating to their transmission facility;
- (c) inform the Independent System Operator in a timely manner of anticipated changes in their transmission facility that could affect the Independent System Operator in carrying out its duties, responsibilities and functions, including
  - (i) the capability of the transmission facility,
  - (ii) the status and availability of the transmission facility, including maintenance schedules, and

- (iii) additions to, alterations to or decommissioning of transmission facilities or any part of them;
  - (d) comply with standards and practices established by the Independent System Operator to enable the Independent System Operator to carry out its duties, responsibilities and functions;
  - (e) provide the Independent System Operator with use of the owner's transmission facility for the purpose of carrying out the Independent System Operator's duties, responsibilities and functions.
- (4)** The owner of a transmission facility may refuse to comply with a direction from the Independent System Operator only if the owner notifies the Independent System Operator that the owner considers that
- (a) a real and substantial risk of damage to its transmission facility could result if the direction were complied with;
  - (b) a real and substantial risk to the safety of its employees or the public could result if the direction were complied with;
  - (c) a real and substantial risk of undue injury to the environment could result if the direction were complied with.

#### **Industrial systems**

- 40(1)** Each owner of an industrial system must assist the Independent System Operator to enable the Independent System Operator to carry out its duties, responsibilities and functions.
- (2)** If, after taking into account the needs of the owner of an industrial system and the capability of the industrial system, the Independent System Operator is satisfied that transmission facilities of an industrial system are required to be used for system access service, the Independent System Operator may apply to the Board for an order.
- (3)** If the Board is satisfied
- (a) access to an industrial system is required to meet the needs or anticipated needs to provide system access service, and
  - (b) the needs of the owner of the industrial system, including the capability and reliability of the owner's system, will continue to be met,

the Board, by order, may grant access to the industrial system and, if so, may establish the rates, and terms and conditions under which the access is provided, or amend existing terms and conditions of the owner under this Act or the *Hydro and Electric Energy Act*.

### Regulations

**41** The Minister may make regulations

- (a) adding to, clarifying, limiting or restricting any of the Independent System Operator's powers, duties, responsibilities and functions, or regulating how they are to be exercised;
- (b) respecting exemptions from the requirement set out in section 17(d) or 18(2).

## Part 3 Market Surveillance Administrator

### Division 1 Corporate Organization

#### MSA established

**42(1)** There is hereby established a corporation to be known as the Market Surveillance Administrator.

**(2)** The Market Surveillance Administrator consists of the individual appointed as Market Surveillance Administrator under section 43.

**(3)** The Market Surveillance Administrator is not a Provincial corporation for the purposes of the *Financial Administration Act*, the *Auditor General Act* or any other enactment.

**(4)** For the purposes of the *Government Accountability Act*, the Market Surveillance Administrator is not part of the ministry, as defined in that Act, of any Minister of the Government of Alberta.

**(5)** The Market Surveillance Administrator is not an agent of the Crown.

#### Appointment of MSA

**43(1)** The Minister must appoint as the Market Surveillance Administrator an individual who, in the opinion of the Minister,

- (a) is independent of any person who has a material interest in the Alberta electric industry, and
  - (b) will enhance the performance of the Market Surveillance Administrator in exercising its mandate.
- (2) The chair of the Board must recommend to the Minister the name of an individual for appointment as the Market Surveillance Administrator.
- (3) The individual appointed as Market Surveillance Administrator must oversee the business and affairs of the Market Surveillance Administrator.
- (4) The term of office of the individual appointed as Market Surveillance Administrator is not more than 5 years.
- (5) The individual appointed as Market Surveillance Administrator is eligible to be appointed for not more than 2 terms of office.
- (6) The individual appointed as Market Surveillance Administrator continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed or a period of 3 months has elapsed, whichever occurs first.
- (7) The individual appointed as Market Surveillance Administrator is eligible to receive the reasonable remuneration and expenses set out in the budget of the Market Surveillance Administrator as approved by the chair of the Board.
- (8) In carrying out the mandate of the Market Surveillance Administrator, the individual appointed as Market Surveillance Administrator must
- (a) act honestly, in good faith and in the public interest,
  - (b) avoid conflicts of interest, and
  - (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

**Natural person powers**

**44(1)** Subject to this Act and the regulations, the Market Surveillance Administrator has the rights, powers and privileges of a natural person.

(2) Except when the power to delegate is restricted by this Act or regulations made under section 74 or 142, the Market Surveillance Administrator may delegate any power or duty conferred or imposed on it under this or any other enactment

- (a) to any of the officers or employees of the Market Surveillance Administrator, or
- (b) to any other qualified person the Market Surveillance Administrator considers appropriate.

(3) The Market Surveillance Administrator shall not delegate the power to approve annual financial statements.

(4) The Market Surveillance Administrator may enter into arrangements or agreements with responsible authorities outside Alberta relating to

- (a) the powers and mandate of the Market Surveillance Administrator, or
- (b) the co-operative enforcement of legislation relating to enactments affecting the electric industry.

#### **Auditor**

**45** The Market Surveillance Administrator must appoint an independent auditor to review and audit its financial statements.

#### **MSA budget**

**46(1)** The Market Surveillance Administrator must prepare a budget for each fiscal year, for approval by the chair of the Board, setting out

- (a) the estimated expenditures, costs and expenses of the Market Surveillance Administrator to carry out its mandate, which may include expenditures for capital assets allocated over the expected useful life of the asset,
- (b) an estimate of the costs and expenses of tribunals, and
- (c) its estimated revenues.

(2) The Market Surveillance Administrator may, with the approval of the chair of the Board, amend its budget.

(3) The Market Surveillance Administrator must be managed so that, on an annual basis, no profit or loss results from its operation.

#### **Budget approval**

**47(1)** The budget of the Market Surveillance Administrator or an amendment to the budget has no effect until it has been approved by the chair of the Board.

(2) The chair of the Board

- (a) must be satisfied that the Market Surveillance Administrator's budget and any amendment to it is reasonable and will provide the Market Surveillance Administrator with sufficient resources to effectively carry out its mandate,
- (b) must act in a timely way on receipt of a budget or on amendment to it,
- (c) may approve the budget or any amendment to it with or without modifications or conditions, and
- (d) must send a copy of the approved budget or any approved amendment to the budget to the Independent System Operator.

(3) On receipt of the approved budget or an approved amendment to the budget of the Market Surveillance Administrator, the Independent System Operator must pay to the Market Surveillance Administrator the aggregate of the estimated expenditures, costs and expenses less the revenues shown in the budget, in a manner and at a time agreed on by them.

(4) If, in respect of any year the Independent System Operator and the Market Surveillance Administrator fail to agree on the manner and timing of paying the amounts in subsection (3), those amounts must be paid by the Independent System Operator to the Market Surveillance Administrator in equal monthly instalments.

#### **Reporting**

**48(1)** The Market Surveillance Administrator must, within 120 days after the end of its fiscal year, provide to the chair of the Board an annual report

- (a) reporting on its activities in the fiscal year, and

- (b) containing its audited financial statements for the fiscal year.
- (2) On receipt of the annual report the chair of the Board must provide a copy to the Minister.
- (3) After the annual report has been provided to the Minister, the Market Surveillance Administrator must make it available to the public.
- (4) The Market Surveillance Administrator must provide to the Minister any other reports and information relating to its mandate that the Minister requests.

## **Division 2 Mandate of the Market Surveillance Administrator**

### **MSA mandate**

- 49(1)** The Market Surveillance Administrator has the mandate to carry out surveillance and investigation in respect of the supply, generation, transmission, distribution, trade, exchange, purchase or sale of electricity, electric energy, electricity services or ancillary services, or any aspect of those activities.
- (2) Without limiting the generality of subsection (1), the Market Surveillance Administrator's mandate includes surveillance and investigation of any one or more of the following:
- (a) the conduct of market participants;
  - (b) the structure and performance of the market;
  - (c) the conduct of the Independent System Operator;
  - (d) the conduct of the Balancing Pool;
  - (e) the conduct of owners of generating units to which power purchase arrangements apply in meeting their obligations to provide the generating capacity set out in those power purchase arrangements;
  - (f) arrangements, information sharing and decisions relating to market participants exchanging or wishing to exchange electric energy and ancillary services or any aspect of those activities;
  - (g) arrangements, information sharing and decisions relating to market participants providing or wishing to provide retail

electricity services to customers, or any aspect of those activities;

- (h) the relationship between the owner of an electric distribution system and its affiliated retailers or other retailers, or any aspect of the parties in the relationship;
- (i) the relationship between the owner of an electric distribution system and a regulated rate provider or between the regulated rate provider and an affiliated retailer, or any aspect of the parties in the relationship;
- (j) electricity exchanges on the tie lines connecting the interconnected electric system in Alberta with electric systems outside Alberta;
- (k) any other conduct specified in the regulations made by the Minister under section 74.

**(3)** In carrying out surveillance and investigation of any conduct, the Market Surveillance Administrator must assess whether or not

- (a) the conduct of market participants is consistent with the fair, efficient and openly competitive operation of the market,
- (b) the person carrying out the conduct has complied with or is complying with this Act, the regulations, the ISO rules, market rules and any arrangements entered into under this Act or the regulations, and
- (c) the ISO rules are sufficient to discourage anti-competitive practices in the electric industry and whether or not the ISO rules facilitate the fair, efficient and openly competitive operation of the market.

**(4)** As part of its mandate, the Market Surveillance Administrator may establish guidelines to further the fair, efficient and openly competitive operation of the market and must make those guidelines public.

#### **Duty to act responsibly**

**50** The Market Surveillance Administrator must carry out its mandate in a fair and responsible manner.

### **Division 3**

## **Complaints to and Investigations by the Market Surveillance Administrator**

#### **Complaints or referrals to the MSA**

**51(1)** Any person may make a complaint or refer a matter to the Market Surveillance Administrator.

**(2)** The complaint or referral must be in writing and must include

- (a) the name and address of the person making it,
- (b) the particulars of the complaint or referral,
- (c) any information or facts supporting the complaint or referral, and
- (d) the signature of the individual or authorized representative of the person making the complaint or referral.

#### **Investigation and notification**

**52(1)** The Market Surveillance Administrator

- (a) may, on its own initiative, investigate any matter that is within its mandate,
- (b) unless section 53 applies, must investigate any complaint or referral made to it that the Market Surveillance Administrator is satisfied is within its mandate, and
- (c) may investigate a power system disturbance or other event that affects the operation of the market.

**(2)** The Market Surveillance Administrator must notify a person making a complaint or referral of the results of an investigation if an investigation is conducted as a result of the complaint or referral.

#### **Decision not to investigate or to discontinue investigation**

**53(1)** The Market Surveillance Administrator may decline to investigate a complaint or referral or discontinue an investigation if the Market Surveillance Administrator is satisfied the complaint or referral is frivolous, vexatious or trivial or otherwise does not warrant investigation.

(2) The Market Surveillance Administrator must give written notice of a decision under subsection (1) to the person who made the complaint or referral, giving reasons for it.

**Notice to another body having jurisdiction**

**54(1)** If after starting an investigation the Market Surveillance Administrator determines that a matter is within the jurisdiction of one or more of

- (a) the Independent System Operator,
- (b) the Board,
- (c) the person or persons responsible for administering the *Competition Act* (Canada), or
- (d) another body,

the Market Surveillance Administrator must notify the appropriate body of the matter.

(2) The Market Surveillance Administrator may

- (a) discontinue the investigation if the matter appears to be within the jurisdiction of another body and in that event must notify the person who made a complaint or referral of the discontinuance, giving reasons for the decision, or
- (b) continue the investigation
  - (i) for the purpose of carrying out its mandate, or
  - (ii) for the purpose of collaborating with any body notified under subsection (1).

**Right to enter premises, make inquiries and demand documents**

**55(1)** The Market Surveillance Administrator may, for the purpose of carrying out its mandate, do personally, or may authorize one or more of its officers, employees or any other person to do, any or all of the following:

- (a) enter and inspect the business premises of a market participant;

- (b) make reasonable inquiries of any person working at those premises and require information to be provided under oath;
- (c) request the production of records that are or may be relevant;
- (d) temporarily remove records that are or may be relevant;
- (e) make copies of records that are or may be relevant;
- (f) request access to operate or request the operation of any computer system of the market participant to search any data or information contained in or available to the system and produce a document or information from the data.

(2) An activity carried out or action taken by or on behalf of the Market Surveillance Administrator under subsection (1) may only be carried out or taken during the normal business hours of the market participant.

(3) If the Market Surveillance Administrator removes records under subsection (1), the Market Surveillance Administrator may make copies of them and must return the original records within a reasonable time.

(4) A person working in the business premises of the market participant must co-operate reasonably with the Market Surveillance Administrator.

(5) A person acting under the authority of this section must carry identification in the form determined by the Market Surveillance Administrator and must present it on request.

#### **Search warrant**

**56(1)** In this section and in sections 57 and 58, “Court” means the Court of Queen’s Bench.

(2) If any person hinders, obstructs or impedes the Market Surveillance Administrator or refuses to co-operate with the Market Surveillance Administrator in the exercise of its mandate, the Market Surveillance Administrator may apply to the Court by notice of motion for an order under subsection (3).

(3) If the Court is satisfied that there are reasonable and probable grounds to believe that access to premises or the production or removal of records is necessary for the Market Surveillance Administrator to carry out its mandate, the Court may make any order it considers necessary to assist the Market Surveillance

Administrator to obtain access or for the production or removal of records.

(4) An application for a Court order under this section may be made without notice to any other person unless the Court orders otherwise.

#### **Return of documents and information**

**57(1)** The Market Surveillance Administrator must return any records seized under a Court order within 60 days after the conclusion of the investigation that gave rise to the seizure, including any hearing or appeal.

(2) If the person from whom records are seized under a Court order requires the original record to be returned before the end of the time period set out in subsection (1), the person must send a written request to the Market Surveillance Administrator to that effect.

(3) Promptly on receiving a request under subsection (2), the Market Surveillance Administrator must

- (a) make copies of the requested record, and
- (b) return the originals to the person from whom they were seized.

(4) Copies of the original record are admissible in proceedings under this Act and the regulations if they are certified by the Market Surveillance Administrator as being true copies of the original record.

#### **Solicitor-client privilege**

**58(1)** If the Market Surveillance Administrator is about to examine or seize any record in respect of which the person having possession of the record, or that person's lawyer, claims that solicitor-client privilege exists, the Market Surveillance Administrator must, without examining or copying the record,

- (a) require the person from whom the record is to be seized to seal the record in an identifiable marked package,
- (b) seize the package containing the record, and
- (c) place the package in the custody of

- (i) the clerk of the Court, or
- (ii) a person that the parties agree on.

**(2)** Within 7 days of the seizure, the person claiming privilege must apply to the Court for an order determining whether the claim of privilege is proper.

**(3)** Notice of the application and any supporting material must be served on the person having custody of the package, on the Market Surveillance Administrator and any other party to the application at least 3 days before the date the application is to be heard.

**(4)** On being served with notice of the application, the person having custody of the package, if not the clerk of the Court, must promptly deliver the package to the custody of the clerk.

**(5)** In determining the application, the Court may open the package and inspect its contents, after which the Court must reseal the contents.

**(6)** The Court must hear the application in private, and if the Court determines

- (a) that the claim of privilege is proper, it must order that the records be returned immediately to the person from whom they were seized, or
- (b) that the claim of privilege is not proper, it must order that the records be delivered immediately to the Market Surveillance Administrator.

**(7)** If the application referred to in subsection (2) is not made within 7 days of the seizure, the package must be immediately released to the Market Surveillance Administrator.

#### **Completion of investigation**

**59(1)** If the Market Surveillance Administrator is satisfied that a market participant

- (a) has contravened this Act, the regulations or ISO rules, or
- (b) has engaged in conduct that is not in accordance with the fair, efficient and openly competitive operation of the market,

the Market Surveillance Administrator may give written notice to the chair of the Board and to the market participant named in the notice.

(2) The notice must set out

- (a) a request that a tribunal be appointed and the reasons for the request;
- (b) the name of the market participant concerned;
- (c) reasonable particulars of the contravention or conduct that is to be presented to the tribunal;
- (d) a statement of the order the Market Surveillance Administrator proposes to request from the tribunal;
- (e) any other matter specified in the regulations made by the Minister under section 74.

#### **Division 4 Tribunals and Enforcement**

##### **Tribunal membership**

**60(1)** The chair of the Board must establish a pool of individuals from whom persons may be selected to serve on a tribunal.

(2) A person selected for the tribunal pool

- (a) must have an understanding of matters relating to the electric industry,
- (b) must be independent of any person having a material interest in the Alberta electric industry,
- (c) shall not be the Market Surveillance Administrator or an officer or employee of the Market Surveillance Administrator, and
- (d) shall not be the chair or any other member of the Board, or an officer or employee of the Board.

**Appointment of tribunal**

**61** On receiving a notice from the Market Surveillance Administrator requesting the appointment of a tribunal, the chair of the Board must

- (a) appoint a tribunal consisting of
  - (i) at least 2 individuals from the tribunal pool, and
  - (ii) one member of the Board, other than the chair,and
- (b) send the tribunal members a copy of the notice from the Market Surveillance Administrator requesting that a tribunal be appointed.

**Tribunal procedure**

**62(1)** The tribunal must hold a hearing into the matters set out in the Market Surveillance Administrator's request for a tribunal, which matters may be amended with the consent of the tribunal.

**(2)** The tribunal must give notice of the date, time and place of the hearing to

- (a) the Market Surveillance Administrator,
- (b) the market participant in respect of whom the hearing is to be held, and
- (c) any other person the tribunal considers to have an interest in the matter.

**(3)** The tribunal hearing must be conducted in accordance with the regulations made by the Minister under section 74.

**(4)** The tribunal

- (a) is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence, and
- (b) may determine the manner in which evidence is to be admitted.

**Obtaining evidence**

**63(1)** A party to proceedings before a tribunal may serve a person with a notice requiring the person to attend and give evidence at the tribunal hearing.

**(2)** The notice has the same effect as a notice in a Court of Queen's Bench proceeding requiring a witness to attend at a hearing or to produce documents and must be served in the same way.

**(3)** A tribunal may administer oaths and must require witnesses to testify under oath.

**(4)** On the application of a party or of the tribunal, the Court of Queen's Bench may make orders and give directions with respect to the attendance of witnesses, production of records and taking of evidence.

**Protection for witnesses**

**64(1)** No person is excused from testifying or from producing any record, when ordered to do so by the tribunal, on the ground that the testimony or record might tend to incriminate the person or subject the person to penalty or forfeiture.

**(2)** A witness who testifies or produces a record at a hearing has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

**Rulings, interim and consent orders**

**65(1)** The tribunal may make any rulings on procedural or jurisdictional matters that it considers necessary.

**(2)** The tribunal may make an interim order only if it is of the opinion that the order is necessary to prevent immediate harm or further harm to the fair, efficient and openly competitive operation of the market.

**(3)** If the Market Surveillance Administrator and the market participant agree on a means to resolve all or part of a matter before the tribunal, they may apply for, and the tribunal may issue, a consent order.

**Amendment or termination of proceedings**

**66(1)** If the tribunal finds that a matter that is the subject of its proceedings has been appropriately investigated, heard or dealt with in whole or in part by another body, the tribunal may amend or terminate all or part of the proceedings.

**(2)** The tribunal may amend or terminate proceedings at the request of a party to the proceedings.

**Decision of tribunal**

**67(1)** Within 60 days after the conclusion of a hearing, the tribunal must make a written decision with reasons.

**(2)** In making a decision, the tribunal may take into consideration any guidelines made by the Market Surveillance Administrator under section 49(4).

**(3)** The tribunal may make an order if it is of the opinion that a market participant

- (a) has contravened this Act, the regulations or the ISO rules, or
- (b) has engaged in conduct that is not in accordance with the fair, efficient and openly competitive operation of the market.

**(4)** The tribunal may, by order, do any or all of the following:

- (a) impose an administrative penalty on the market participant of either or both of the following:
  - (i) a daily amount of not more than \$100 000 for each day or part of a day on which a contravention or conduct occurs or continues;
  - (ii) a one-time amount to address economic benefit when the tribunal is of the opinion that the market participant has derived an economic benefit directly or indirectly as a result of the contravention or conduct;
- (b) impose any terms and conditions the tribunal considers appropriate on the market participant relating to the supply, generation, transmission, distribution, trade, offer, exchange, purchase or sale of electricity, electric energy, electricity services or ancillary services;

- (c) prohibit the market participant from engaging in conduct specified in the order or direct the market participant to take action specified in the order;
  - (d) direct the market participant to pay to the Balancing Pool the costs of the tribunal, the tribunal's legal fees, and any other costs the tribunal considers appropriate, on a full-indemnity basis, as assessed by the tribunal.
- (5) When making an order the tribunal may take into consideration any failure or refusal of a market participant to co-operate with the Market Surveillance Administrator.
- (6) A decision and order of a tribunal is a matter of public record and must be kept at the offices of the Market Surveillance Administrator.
- (7) Copies of the decision and order must be made available to the public except to the extent that the hearing was held in private.

#### **Correction of errors and omissions**

- 68(1)** A tribunal may, on its own initiative within 30 days after making a decision or at the request of a party to the proceedings made within 30 days after receiving the decision,
- (a) correct typographical errors, errors of calculation and similar errors in the decision, or
  - (b) amend the decision so as to correct an injustice caused by an oversight on the part of the tribunal.
- (2) The tribunal may,
- (a) on its own initiative within 30 days after making a decision or such longer time as approved by the parties, or
  - (b) at the request of a party made within 30 days after receipt of the decision by that party,
- make an additional decision to deal with a matter in dispute that was presented in the hearing but omitted from the earlier decision.
- (3) The tribunal need not hold a hearing or meeting before rejecting a request made under this section.

**Enforcement of tribunal orders and offence**

**69(1)** Subject to the right to appeal to the Court of Appeal under section 70, if a person fails to pay an administrative penalty or an order for payment of the tribunal's costs in accordance with the order imposing it, the Market Surveillance Administrator may file a copy of the order with the clerk of the Court of Queen's Bench, and on being filed, the order has the same force and effect and may be enforced by the Market Surveillance Administrator as if it were a judgment or order of the Court.

**(2)** An administrative penalty imposed by the tribunal must be paid to the Balancing Pool.

**(3)** If the order is against a market participant that is a corporation, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the conduct giving rise to the order is jointly and severally liable with the corporation for the administrative penalty, costs or other sanction imposed by the order.

**(4)** Subject to the right to appeal to the Court of Appeal under section 70, the Market Surveillance Administrator may apply to the Court of Queen's Bench to enforce a tribunal order, other than an order to pay an administrative penalty or costs, on giving notice of the application to the person against whom enforcement is sought, in accordance with the *Alberta Rules of Court*.

**(5)** An application under subsection (4) must be accompanied with the original tribunal order or a certified copy of it.

**(6)** The Court of Queen's Bench may give judgment enforcing a tribunal order unless

- (a) the order is the subject of an appeal under section 70 that has not been decided,
- (b) the order is the subject of judicial proceedings that put it in question, or
- (c) the order is not capable of enforcement in law.

**(7)** A person who fails to comply with an order of the tribunal is guilty of an offence and is liable to a fine of not more than \$100 000 a day for each day during which non-compliance continues.

**(8)** In addition, the Court may order the market participant to pay to the Balancing Pool any administrative penalty imposed on it by the tribunal.

**Appeals to Court of Appeal**

- 70(1)** Subject to subsection (2), an appeal lies from a tribunal order to the Court of Appeal on a question of jurisdiction or on a question of law.
- (2)** Leave to appeal may be obtained from a judge of the Court of Appeal only on an application made
- (a) within 30 days from the day that the tribunal order sought to be appealed from was made, or
  - (b) within a further period of time as granted by the judge if the judge is of the opinion that the circumstances warrant the granting of that further period of time.
- (3)** Notice of the appeal must be given to the parties affected by the appeal and to the tribunal chair.
- (4)** An order of the tribunal takes effect at the time prescribed by the tribunal order, and the operation of the order is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.
- (5)** Despite subsection (4), when the tribunal thinks fit, the tribunal may, on application to it, suspend the operation of the order being appealed until
- (a) the decision of the Court hearing the appeal is rendered or the time for appeal to the Supreme Court of Canada has expired, or
  - (b) the appeal has been abandoned.
- (6)** Within 30 days from the day that the leave to appeal is obtained, the tribunal chair must forward to the Registrar of the Court of Appeal the transcript and record of the hearing and the tribunal order.
- (7)** On receipt of the transcript, record and tribunal order from the tribunal chair, the Registrar of the Court of Appeal must set the appeal down for hearing at the next sittings of the Court, but the hearing shall not commence until at least 2 weeks has elapsed from the day that the appeal is so set down.
- (8)** After the appeal has been set down by the Registrar, the party appealing must give to the parties affected by the appeal, or to the solicitors by whom those persons were represented before the tribunal, and to the tribunal chair, notice in writing that the appeal has been so set down for hearing.

- (9) The Court of Appeal must hear an appeal made under this section as speedily as practicable.
- (10) On the hearing of the appeal,
- (a) no evidence may be admitted other than the evidence that was submitted to the tribunal on the making of the order that is being appealed from;
  - (b) the Court of Appeal may draw all inferences that are not inconsistent with the facts expressly found by the tribunal and that are necessary for determining the question of jurisdiction or of law, as the case may be, and must certify its opinion to the tribunal;
  - (c) the Court of Appeal must proceed to confirm, vacate or give directions to vary the order that is being appealed, and if the Court vacates or gives directions to vary the order, the Court must refer the matter back to the tribunal for further consideration and redetermination.
- (11) The tribunal is entitled to be represented, by counsel or otherwise, on the argument of an appeal.
- (12) Neither the tribunal nor any member of the tribunal is in any case liable for costs by reason or in respect of an appeal or application.
- (13) If an order or direction is vacated or a variation is directed, the matter must be reconsidered and redetermined by the tribunal, and the tribunal must vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.

**Immunity for tribunal members**

**71** The members of a tribunal are not liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power, duty, responsibility or function under this Act or the regulations.

## **Division 5 Regulatory Forbearance, Complaints to the Board and Regulations**

### **Regulatory forbearance**

**72(1)** The Market Surveillance Administrator may decide to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any part of its mandate if the Market Surveillance Administrator finds as a question of fact that a person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

**(2)** The Market Surveillance Administrator shall not refrain under subsection (1) in relation to a person, product, class of products, service or class of services if the Market Surveillance Administrator finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuation of a competitive market for that person, product, class of products, service or class of services.

### **Complaints about MSA**

**73(1)** Any person may make a written complaint to the chair of the Board about the conduct of the Market Surveillance Administrator.

**(2)** The chair of the Board

- (a) must refuse the complaint if the chair is satisfied that it deals with a matter the substance of which is before or has been dealt with by a tribunal, or
- (b) may refuse the complaint if the chair is satisfied that the complaint is frivolous, vexatious or trivial or otherwise does not warrant an investigation.

**(3)** A decision by the chair of the Board to refuse the complaint or to consider the complaint is final and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.

**(4)** The person making the complaint and the Market Surveillance Administrator must, if the chair of the Board so requires, participate in a dispute resolution process selected by the chair of the Board, which may include arbitration under the *Arbitration Act*.

**Regulations****74** The Minister may make regulations

- (a) adding to, clarifying, limiting or restricting any of the Market Surveillance Administrator's powers and mandate or regulating how they are to be exercised;
- (b) authorizing the Market Surveillance Administrator, with or without conditions, to appoint officials from another jurisdiction as officers of the Market Surveillance Administrator under this Act, and authorizing disclosure of information held by the Market Surveillance Administrator to authorities in other jurisdictions, with or without conditions;
- (c) respecting the process and procedure of a tribunal, including matters respecting
  - (i) the manner and means of challenging tribunal members and conferring authority on the Court of Queen's Bench with respect to those challenges,
  - (ii) the service and deemed service of notices,
  - (iii) the designation of a chair of the tribunal and the chair's authority, and respecting the majority or number of tribunal members who make a decision and how tied decisions are to be resolved,
  - (iv) the circumstances under which a tribunal may hold its hearings in private,
  - (v) the recording of evidence,
  - (vi) the provision of legal counsel to the tribunal,
  - (vii) the period within which a tribunal must complete its hearings and make its decision, and
  - (viii) empowering the tribunal to proceed in the absence of a party;
- (d) respecting the contents of notices under section 59 and respecting the powers and duties of the chair of the Board relating to a tribunal, including the remuneration and expenses of tribunal members and by whom they are to be paid and other administrative, process and procedural matters that may be required;

- (e) respecting the records, reports or other information to be provided to the Market Surveillance Administrator by market participants, the use that the Market Surveillance Administrator can make of the records, reports or information, and limitations on that use;
- (f) respecting the disclosure to and confidentiality of records viewed or obtained by the Market Surveillance Administrator and the right of the public to have access to all or any of them.

## **Part 4 Balancing Pool**

### **Division 1 Corporate Organization**

#### **Balancing Pool established**

**75(1)** There is hereby established a corporation to be known as the Balancing Pool.

**(2)** The Balancing Pool consists of its members, who are appointed under section 76.

**(3)** The Balancing Pool is not a Provincial corporation for the purposes of the *Financial Administration Act*, the *Auditor General Act* or any other enactment.

**(4)** For the purposes of the *Government Accountability Act*, the Balancing Pool is not part of the ministry, as defined in that Act, of any Minister of the Government of Alberta.

**(5)** The Balancing Pool is not an agent of the Crown.

#### **Appointment of Balancing Pool members**

**76(1)** The Minister must appoint as members of the Balancing Pool not more than 9 individuals who, in the opinion of the Minister,

- (a) are independent of any person who has a material interest in the Alberta electric industry, and
- (b) will enhance the performance of the Balancing Pool in exercising its powers and carrying out its duties, responsibilities and functions.

- (2) The Minister must designate one of the members of the Balancing Pool as chair.
- (3) In accordance with Balancing Pool bylaws, the members of the Balancing Pool
- (a) must recommend to the Minister individuals to be appointed as members for all appointments after the appointment of the first members, and
  - (b) may recommend to the Minister an individual to be designated as chair when a chair needs to be designated.
- (4) The members of the Balancing Pool must oversee the business and affairs of the Balancing Pool.
- (5) The term of office of a member is for not more than 3 years.
- (6) A member is eligible to be appointed for not more than 3 terms of office.
- (7) A member continues to hold office after the expiry of the member's term of office until the member is reappointed, the member's successor is appointed or a period of 3 months has elapsed, whichever first occurs.
- (8) A member is eligible to receive the reasonable remuneration and expenses set out in the Balancing Pool bylaws.
- (9) In carrying out any duty, responsibility or function as a member of the Balancing Pool, the member must
- (a) act honestly and in good faith,
  - (b) avoid conflicts of interest, and
  - (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

**Natural person powers**

**77(1)** Subject to this Act and the regulations, the Balancing Pool has the rights, powers and privileges of a natural person.

(2) Except when the power to delegate is restricted by this Act, by regulations made under section 88 or 142 or by Balancing Pool bylaws, the Balancing Pool may delegate any power or duty conferred or imposed on it under this or any other enactment

- (a) to any of the members, officers or employees of the Balancing Pool, or
  - (b) to any other qualified person the Balancing Pool considers appropriate.
- (3) The Balancing Pool shall not delegate the power to approve annual financial statements or its power to make bylaws.

**Bylaws**

**78(1)** The Balancing Pool must make bylaws governing its business and affairs.

(2) In its bylaws the Balancing Pool

- (a) must establish
  - (i) a code of conduct for its members, officers, employees and agents,
  - (ii) criteria and a process for recommending the appointment of members and designation of an individual as chair when an appointment or designation is needed,
  - (iii) the reasonable remuneration and expenses Balancing Pool members are eligible to receive, and
  - (iv) criteria relating to the removal of members and the process to be followed to recommend to the Minister the removal of a member,

and

- (b) may establish
  - (i) the number of its members that constitutes a quorum at meetings of the Balancing Pool, and
  - (ii) rules respecting the number of its members that is required to carry out any decision in order for that decision to bind all of its members and to constitute a decision of the Balancing Pool.

(3) The Balancing Pool must make its bylaws available to the public.

**Chief executive officer**

**79** The Balancing Pool must appoint a qualified individual to act as its chief executive officer.

**Auditor**

**80** The Balancing Pool must appoint an independent auditor to review and audit its financial statements.

**Committees**

**81** If the Balancing Pool establishes a committee to consult with market participants or other persons, it must

- (a) set up a process for appointing individuals to the committee,
- (b) describe the committee's mandate, and
- (c) specify the reasonable remuneration and expenses members of the committee are eligible to be paid for committee work.

**Budget**

**82(1)** The Balancing Pool must prepare a budget for each fiscal year setting out the estimated revenues and expenses of the Balancing Pool to carry out its powers, duties, responsibilities and functions, which may include expenditures for capital assets allocated over the useful life of the asset.

**(2)** The Balancing Pool may amend its budget.

**(3)** The Balancing Pool, in establishing or amending its budget, must forecast its revenues and expenses over the expected life of the Balancing Pool and calculate an annualized amount.

**(4)** The Balancing Pool must notify the Independent System Operator of the annualized amount for each fiscal year.

**(5)** On receiving notice of the annualized amount, the Independent System Operator must include that amount in its tariff in accordance with section 30(2).

**(6)** The Board must

- (a) approve the annualized amount provided to the Independent System Operator by the Balancing Pool, without modification, and

- (b) approve, with or without modification, the allocation of the annualized amount to the owners of electric distribution systems, industrial systems and persons that have made arrangements under section 101(2).

**(7)** The Balancing Pool and the Independent System Operator must co-operate in determining the appropriate timing and methodology of transferring the annualized amount

- (a) to the Independent System Operator from the Balancing Pool, if the amount is a positive amount, or
- (b) from the Independent System Operator to the Balancing Pool, if the amount is a negative amount.

**(8)** If in respect of any year the Independent System Operator and the Balancing Pool fail to agree on the timing and methodology of transferring the annualized amount, that amount must be transferred by the Independent System Operator to the Balancing Pool in equal monthly instalments.

**(9)** In this section, “annualized amount” means a forecast of an equal annual amount that, if included in the ISO tariff, would result in the amount in the balancing pool accounts totalling \$0 when it is wound up.

#### **Balancing Pool investments**

**83(1)** The Balancing Pool must follow prudent investment standards in making investment decisions relating to and in managing the balancing pool accounts.

**(2)** A prudent investment standard is a standard that, in the overall context of an investment portfolio, a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation.

#### **Records and reporting**

**84** The Balancing Pool must

- (a) maintain accounting records and a record of its business and affairs,

- (b) within 120 days after the end of its fiscal year, prepare and have audited financial statements of the balancing pool accounts in the preceding fiscal year,
- (c) at any time when required to do so by the Minister, prepare and have audited financial statements relating to any part of its business and affairs for any period of time specified by the Minister,
- (d) after the end of each fiscal year, provide the Minister a report containing
  - (i) its audited financial statements, and
  - (ii) a summary of the activities of the Balancing Pool relating to the balancing pool accounts in the year,and
- (e) make the report provided to the Minister available to the public.

## **Division 2 Balancing Pool Duties**

### **Balancing Pool duties**

**85(1)** The Balancing Pool has the following duties:

- (a) to establish or continue one or more accounts which together are to be known as the balancing pool accounts;
- (b) to manage generation assets in a commercial manner during the period the Balancing Pool holds generation assets;
- (c) to organize the management of generation assets in a manner that is in keeping with the eligibility requirements for a person to hold a power purchase arrangement or an agreement or arrangement derived from a power purchase arrangement in accordance with the regulations made by the Minister under section 99;
- (d) to sell generation assets when, in the opinion of the Balancing Pool, market conditions are such that a competitive sale of the assets will result in the Balancing Pool receiving fair market value for the generation assets;
- (e) to continue to hold the hydro power purchase arrangement and manage the payments associated with that power purchase arrangement;

- (f) to participate in regulatory, dispute resolution and other proceedings and processes if, in the opinion of the Balancing Pool, it is necessary or advisable to do so in order to protect the interests of the Balancing Pool and the value of the Balancing Pool's assets;
  - (g) to manage risks prudently in all aspects of the Balancing Pool's operations;
  - (h) to ensure that over the life of the Balancing Pool any net amount in the balancing pool accounts that is greater than \$0 or less than \$0 is included in the ISO tariff;
  - (i) to oversee payments into or out of the balancing pool accounts in accordance with this Act and the regulations;
  - (j) to manage the balancing pool accounts so that, over the life of the Balancing Pool, no profit or loss results, after accounting for the annualized amount under section 82(7) as a revenue or expense of the Balancing Pool;
  - (k) to carry out any other function or duty given to it under the regulations.
- (2) In this section, "generation assets" means
- (a) power purchase arrangements held by the Balancing Pool that include the right to exchange electric energy and ancillary services, and
  - (b) agreements or arrangements derived from power purchase arrangements held by the Balancing Pool that include the right to exchange electric energy and ancillary services.

**Duty to act responsibly**

**86** The Balancing Pool must exercise its powers and carry out its duties in a manner that is responsible and efficient.

### **Division 3 Winding-up and Regulations**

**Winding-up**

**87** The Balancing Pool must

- (a) commence winding up the Balancing Pool on December 31, 2020, or with the approval of the Minister, on an earlier date, and

- (b) complete winding up not later than June 30, 2021.

### Regulations

**88** The Minister may make regulations

- (a) respecting payments into and out of the balancing pool accounts and who is to make or receive the payments;
- (b) adding to, clarifying, limiting or restricting any of the Balancing Pool's powers, duties, responsibilities and functions or regulating how they are to be exercised;
- (c) respecting the winding-up of the Balancing Pool.

## Part 5 Liability

### Definition

**89** In this Part, "affiliate" has the meaning given to it in the *Business Corporations Act*.

### Liability protection of ISO

**90(1)** In this section,

- (a) "direct loss or damage" does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever arising out of or in any way connected with an Independent System Operator act;
- (b) "Independent System Operator act" means any act or omission carried out or purportedly carried out by an Independent System Operator person in exercising its powers and carrying out its duties, responsibilities and functions under this Act and the regulations;
- (c) "Independent System Operator person" means
  - (i) the Independent System Operator,
  - (ii) each member of the Independent System Operator,
  - (iii) each officer and employee of the Independent System Operator,

- (iv) each agent or contractor of the Independent System Operator, and
  - (v) each affiliate of a person referred to in subclause (iv).
- (2)** No action lies against an Independent System Operator person, and an Independent System Operator person is not liable, for an Independent System Operator act.
- (3)** Subsection (2) does not apply
- (a) where an Independent System Operator act is carried out by an Independent System Operator person that is not an individual, if the act constitutes wilful misconduct, negligence or breach of contract, or
  - (b) where an Independent System Operator act is carried out by an Independent System Operator person who is an individual, if the act is not carried out in good faith.
- (4)** Where, as a result of the operation of subsection (3), an Independent System Operator person is liable to another person for an Independent System Operator act, the Independent System Operator person is liable only for direct loss or damage suffered or incurred by that other person.
- (5)** In addition to any other indemnity the Independent System Operator may provide, where
- (a) legal action has been commenced against an Independent System Operator person for an Independent System Operator act, and
  - (b) the Independent System Operator person is, as a result of the operation of subsection (2) or otherwise, not liable,
- the Independent System Operator must indemnify that Independent System Operator person for, and pay to that Independent System Operator person, all of that Independent System Operator person's costs of defending the legal action, including all reasonable legal expenses and legal fees on a solicitor and client basis, and the amounts so paid to or on behalf of that Independent System Operator person are recoverable by the Independent System Operator in accordance with subsection (6).
- (6)** The amounts paid to or on behalf of an Independent System Operator person under subsection (5) may be recovered by the Independent System Operator through ISO fees established under section 21.

**Liability protection of MSA**

**91(1)** In this section,

- (a) “direct loss or damage” does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever arising out of or in any way connected with a market surveillance act;
- (b) “market surveillance act” means any act or omission carried out or purportedly carried out by a market surveillance person in exercising its powers and carrying out the mandate of the Market Surveillance Administrator under this Act and the regulations;
- (c) “market surveillance person” means
  - (i) the Market Surveillance Administrator,
  - (ii) the individual appointed as the Market Surveillance Administrator,
  - (iii) each officer and employee of the Market Surveillance Administrator,
  - (iv) each agent or contractor of the Market Surveillance Administrator, and
  - (v) each affiliate of a person referred to in subclause (iv).

**(2)** No action lies against a market surveillance person, and a market surveillance person is not liable, for a market surveillance act.

**(3)** Subsection (2) does not apply

- (a) where a market surveillance act is carried out by a market surveillance person that is not an individual, if the act is not carried out in good faith or is a breach of contract, or
- (b) where a market surveillance act is carried out by a market surveillance person who is an individual, if the act is not carried out in good faith.

**(4)** Where, as a result of the operation of subsection (3), a market surveillance person is liable to another person for a market surveillance act, the market surveillance person is liable only for direct loss or damage suffered or incurred by that other person.

(5) In addition to any other indemnity the Market Surveillance Administrator may provide, where

- (a) a legal action has been commenced against a market surveillance person for a market surveillance act, and
- (b) the market surveillance person is, as a result of the operation of subsection (2) or otherwise, not liable,

the Market Surveillance Administrator must indemnify that market surveillance person for, and pay to that market surveillance person, all of that market surveillance person's costs of defending the legal action, including all reasonable legal expenses and legal fees on a solicitor and client basis, and the amounts so paid to or on behalf of that market surveillance person are recoverable by the Market Surveillance Administrator in accordance with subsection (6).

(6) The amounts paid to or on behalf of a market surveillance person under subsection (5) may be recovered by the Market Surveillance Administrator from the Independent System Operator through an approved budget or approved amended budget under section 47.

#### **Liability protection of Balancing Pool**

**92(1)** In this section,

- (a) "balancing pool person" means
  - (i) the Balancing Pool,
  - (ii) each member of the Balancing Pool,
  - (iii) each officer and employee of the Balancing Pool,
  - (iv) each agent or contractor of the Balancing Pool, and
  - (v) each affiliate of a person referred to in subclause (iv);
- (b) "balancing pool person act" means any act or omission carried out or purportedly carried out by a balancing pool person in exercising its powers and carrying out its duties, responsibilities and functions under this Act and the regulations;
- (c) "direct loss or damage" does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss

or damage whatsoever arising out of or in any way connected with a balancing pool act.

(2) No action lies against a balancing pool person, and a balancing pool person is not liable, for a balancing pool person act.

(3) Subsection (2) does not apply

- (a) where a balancing pool person act is carried out by a balancing pool person that is not an individual, if the act constitutes wilful misconduct, negligence or breach of contract, or
- (b) where a balancing pool person act is carried out by a balancing pool person who is an individual, if the act is not carried out in good faith.

(4) Where, as a result of the operation of subsection (3), a balancing pool person is liable to another person for a balancing pool person act, the balancing pool person is liable only for direct loss or damage suffered or incurred by that other person.

(5) In addition to any other indemnity the Balancing Pool may provide, where

- (a) a legal action has been commenced against a balancing pool person for a balancing pool person act, and
- (b) the balancing pool person is, as a result of the operation of subsection (2) or otherwise, not liable,

the Balancing Pool must indemnify that balancing pool person for, and pay to that balancing pool person, all of that balancing pool person's costs of defending the legal action, including all reasonable legal expenses and legal fees on a solicitor and client basis, and the amounts so paid to or on behalf of that balancing pool person are recoverable by the Balancing Pool in accordance with subsection (6).

(6) The amounts paid to or on behalf of a balancing pool person under subsection (5) may be recovered by the Balancing Pool from the Independent System Operator through a budget or amended budget established under section 82.

#### **Liability protection for independent assessment team**

**93(1)** No action may be brought against the independent assessment team or any member of it, and the independent assessment team and each member of it are not liable, for any real

or perceived loss or damage resulting from any determination made by the independent assessment team or from the implementation of any determination made by the independent assessment team under Part 4.1 of the *Electric Utilities Act*, SA 1995 cE-5.5, and the *Electric Utilities Act*, RSA 2000 cE-5.

(2) In this section, “independent assessment team” means the independent assessment team established by the Minister under Part 4.1 of the *Electric Utilities Act*, SA 1995 cE-5.5, and the *Electric Utilities Act*, RSA 2000 cE-5.

### Regulations

**94** The Lieutenant Governor in Council may make regulations

- (a) protecting any person named in the regulations from the legal liability specified in the regulations in the circumstances and in the manner described in the regulations;
- (b) prohibiting, limiting or restricting any cause of action for the purposes of clause (a);
- (c) requiring a person named or described in the regulations to indemnify any other person named or described in the regulations to the extent and in the circumstances described in the regulations;
- (d) providing immunity from a legal action described in the regulations for persons named or described in the regulations in respect of acts or omissions described in the regulations;
- (e) limiting or restricting the nature of damages or loss that a person named or described in the regulations may recover in action from any other person named or described in the regulations;
- (f) requiring the Board to take into consideration, when considering a tariff, or to impose as part of the terms and conditions of a tariff, any of the matters described or referred to in clauses (a) to (e).

## Part 6 Generation

### Permissible municipal interests in generating units

**95(1)** No municipality and no subsidiary of a municipality may hold, directly or indirectly, an interest in a generating unit except in accordance with any or all of the provisions of this section.

**(2)** If a municipality or a subsidiary of a municipality had an interest in a generating unit on May 1, 1995, that municipality or subsidiary may continue to hold that interest after May 1, 1995 if the generating capacity of the unit does not increase significantly beyond its capacity on that date.

**(3)** If

- (a) a municipality had an interest in a generating unit on May 1, 1995, and
- (b) a subsidiary of the municipality acquires the interest after May 1, 1995,

the municipality and the subsidiary are considered to be in compliance with subsection (2) if the generating capacity of the generating unit does not increase significantly beyond its capacity on May 1, 1995.

**(4)** The City of Medicine Hat or a subsidiary of the City may hold an interest in a generating unit if the generating capacity of that unit and all other generating units in which the City or a subsidiary of the City has an interest does not exceed the capacity that is needed to reliably meet the requirements of customers in the service area of the City.

**(5)** The Board must determine whether

- (a) a proposal by the City of Medicine Hat or a subsidiary of the City to hold an interest in a generating unit, or
- (b) an interest in a generating unit that is held by the City of Medicine Hat or a subsidiary of the City

is in accordance with subsection (4).

**(6)** Before making a determination under subsection (5), the Board must obtain an independent assessment about whether the proposal to hold an interest in a generating unit or whether the interest in a generating unit is in accordance with subsection (4).

(7) The City of Medicine Hat or a subsidiary of the City cannot acquire an interest in a generating unit under subsection (4) during any period that the City or a subsidiary of the City does not provide the information or statements required by a regulation made under section 142(1)(h).

(8) A municipality or a subsidiary of a municipality may hold an interest in a generating unit located within the boundaries of the municipality if the generating unit is part of a process that is carried out on property of which the municipality or subsidiary is the owner or tenant and the electric energy produced by the unit is incidental to the main purpose of that process.

(9) A municipality or a subsidiary of a municipality may hold an interest in a generating unit located within the boundaries of the municipality on property of which the municipality or subsidiary is the owner or tenant if a majority of the electric energy produced annually by the unit is used by the municipality or subsidiary on that property.

(10) A municipality or a subsidiary of a municipality may, with the authorization of the Minister, hold an interest in a generating unit if the arrangement under which the interest is held is structured in a manner that prevents any tax advantage, subsidy or financing advantage or any other direct or indirect benefit as a result of association with the municipality or subsidiary.

(11) The Minister must establish procedures to obtain an independent assessment about whether a proposal by a municipality or a subsidiary of a municipality to hold an interest in a generating unit under subsection (10) is in accordance with that subsection.

(12) If the independent assessment concludes that a proposal by a municipality or a subsidiary of a municipality to hold an interest in a generating unit under subsection (10) is in accordance with that subsection, the Minister must give an authorization.

(13) The Minister may establish procedures to facilitate the resolution of any dispute under this section, except those dealt with by the Board under subsections (4) to (6), about whether an interest or a proposed interest of a municipality or a subsidiary of a municipality in a generating unit is in accordance with this section.

#### **Continuation of power purchase arrangements**

**96(1)** A power purchase arrangement continues to have effect in accordance with its terms and conditions, subject to this Act and the regulations.

(2) A power purchase arrangement held by the balancing pool administrator immediately before the coming into force of this section continues to be held by the Balancing Pool in the capacity of a buyer for all purposes of this Act, the regulations and the power purchase arrangement.

(3) A power purchase arrangement, other than a power purchase arrangement held by the Balancing Pool, that is terminated other than under section 15.2 of the power purchase arrangement

- (a) is deemed to have been sold to the Balancing Pool, and
- (b) is to be held by the Balancing Pool in the capacity of a buyer for all purposes of this Act, the regulations and the power purchase arrangement.

**Termination of power purchase arrangement by the Balancing Pool**

**97** The Balancing Pool may, notwithstanding the terms and conditions of a power purchase arrangement held by the Balancing Pool under section 96(2) and (3), terminate the power purchase arrangement if the Balancing Pool

- (a) consults with representatives of customers and the Minister about the reasonableness of the termination,
- (b) gives to the owner of the generating unit to which the power purchase arrangement applies 6 months' notice, or any shorter period agreed to by the owner, of its intention to terminate, and
- (c) pays the owner or ensures that the owner receives an amount equal to the remaining closing net book value of the generating unit, determined in accordance with the power purchase arrangement, as if the generating unit had been destroyed, less any insurance proceeds.

**Power purchase arrangement ceases to apply**

**98** A power purchase arrangement ceases to apply to a generating unit

- (a) on the expiration of the power purchase arrangement in accordance with the unit effective term completion date specified in the power purchase arrangement,

- (b) on the termination of the power purchase arrangement under section 15.2 of the power purchase arrangement, or
- (c) on the termination of the power purchase arrangement by the Balancing Pool.

### **Regulations**

#### **99** The Minister may make regulations

- (a) respecting the payment of an amount into the Balancing Pool by the owner of a generating unit that is
  - (i) constructed at a power plant, and
  - (ii) designed to use the facilities identified as associated facilities in Schedule A of a power purchase arrangement;
- (b) respecting flare gas generating units, including specifying which provisions of this Act and the regulations do not apply to flare gas generating units and the information the owners or operators of a flare gas generating unit must provide to the Independent System Operator;
- (c) respecting the eligibility of a person to hold a power purchase arrangement or a contract, agreement or arrangement derived from a power purchase arrangement and prohibiting a person from holding a power purchase arrangement or an agreement or arrangement derived from a power purchase arrangement;
- (d) respecting the holding and sale of a power purchase arrangement or agreements or arrangements derived from a power purchase arrangement by the Balancing Pool;
- (e) respecting the deletion, suspension, addition or replacement of one or more provisions of a power purchase arrangement when a power purchase arrangement is held by the Balancing Pool;
- (f) respecting the duty of an owner of a generating unit to which a power purchase arrangement applies to provide information, including confidential information, to the Balancing Pool for the purpose of the sale of that power purchase arrangement or an agreement or arrangement derived from that power purchase arrangement by the Balancing Pool;

- (g) respecting the approval of the Board of decommissioning costs and the amounts to be collected from customers, or through a power purchase arrangement by the owner of a generating unit to which a power purchase arrangement applies, for the purpose of decommissioning the generating unit, including payment to be made to or to be received from the Balancing Pool;
- (h) respecting the determination and treatment of isolated generating units, including the preparation of tariffs related to those units and who is to make or receive payments relating to those units;
- (i) respecting the requirement for customer choice in areas not served by the interconnected electric system, including payments to be made to the Independent System Operator by retailers and owners of electric distribution systems in respect of those areas and customers;
- (j) respecting the payments into or out of the Balancing Pool related to the *Small Power Research and Development Act*;
- (k) respecting the amendment of Alberta Regulation AR 175/2000 in order to continue a power purchase arrangement that applies to more than one generating unit as power purchase arrangements that will apply to one or more of those generating units.

## **Part 7 Distribution**

### **Medicine Hat**

**100** Nothing in this Part applies

- (a) to the electric distribution system owned by the City of Medicine Hat or a subsidiary of the City in the service area of the City, or
- (b) to customers whose property is located in the service area of the City of Medicine Hat,

unless the City of Medicine Hat or a subsidiary of the City

- (c) has an affiliated retailer that provides retail electricity services outside the service area of the City, or
- (d) provides distribution access service outside the service area of the City.

**Owner's right to provide distribution access service**

**101(1)** A person wishing to obtain electricity for use on property must make arrangements for the purchase of distribution access service from the owner of the electric distribution system in whose service area the property is located.

**(2)** If the person has an interval meter and receives electricity directly from the transmission system, the person may, with the prior approval of

- (a) the owner of the electric distribution system in whose service area the person's property is located, if any, and
- (b) the Independent System Operator,

enter into an arrangement directly with the Independent System Operator for the provision of system access service.

**(3)** No person other than the owner of an electric distribution system may provide distribution access service on the electric distribution system of that owner.

**Distribution tariff**

**102(1)** Each owner of an electric distribution system must prepare a distribution tariff for the purpose of recovering the prudent costs of providing distribution access service by means of the owner's electric distribution system.

**(2)** The owner of the electric distribution system must apply for approval of its distribution tariff

- (a) to the Board,
- (b) to the council of a municipality, if the owner is a municipality or a subsidiary of a municipality
  - (i) that does not have an affiliated retailer that provides retail electricity services outside the service area of the municipality, and
  - (ii) that does not provide distribution access service outside the service area of the municipality either on its own behalf or on behalf of another owner,

or

- (c) to the board of directors of the association, if the owner is a rural electrification association.

- (3) A distribution tariff of an owner of an electric distribution system that is a municipality or a subsidiary of a municipality
- (a) that has an affiliated retailer that provides retail electricity services outside the service area of the municipality, or
  - (b) that provides distribution access service outside the service area of the municipality, either on its own behalf or on behalf of another owner,

takes effect as of January 1, 2004.

- (4) A distribution tariff must be prepared in accordance with the regulations made by the Minister under section 108.

#### **Regulated rate tariff**

**103(1)** Each owner of an electric distribution system must prepare a regulated rate tariff for the purpose of recovering the prudent costs of providing electricity services to eligible customers.

(2) The owner must apply for approval of its regulated rate tariff to the Board unless subsection (3) or (4) applies.

(3) If the owner is a municipality or a subsidiary of a municipality that does not have an affiliated retailer that provides retail electricity services outside the service area of the municipality, the owner may apply to the council of the municipality for approval of the regulated rate tariff.

(4) If the owner is a rural electrification association that does not have an affiliated retailer that provides retail electricity services to customers who are not members of a rural electrification association, the owner may apply to the board of directors of the association for approval of the regulated rate tariff.

(5) Despite subsections (3) and (4), the owner must apply to the Board if required to do so by the regulations made by the Lieutenant Governor in Council under section 142(1)(j).

(6) A regulated rate tariff of an owner of an electric distribution system

- (a) that is a municipality or a subsidiary of a municipality that has an affiliated retailer that provides retail electricity services outside the service area of the municipality, or

- (b) that is a rural electrification association that has an affiliated retailer that provides retail electricity services to customers who are not members of a rural electrification association

takes effect as of January 1, 2004.

**(7)** The charge for electric energy set out in the regulated rate tariff effective

- (a) as of January 1, 2004 for eligible customers, other than rate classification customers, and
- (b) as of January 1, 2006 for eligible customers, including rate classification customers,

must be determined in accordance with the regulations made by the Minister under section 108.

*(NOTE: AR 324/2003 has extended the dates specified in section 103(7)(a) and (b) of the Electric Utilities Act to July 1, 2006.)*

**(8)** The owner may recover in its regulated rate tariff its prudent billing costs of

- (a) distribution tariff billing for the regulated rate, and
- (b) billing to eligible customers for the regulated rate tariff, including taxes and municipal charges.

**(9)** If an eligible customer who is in the service area of the owner's electric distribution system is not enrolled with a retailer, the owner is the customer's regulated rate provider and the customer is deemed to have elected to purchase electricity services under that owner's regulated rate tariff.

#### **Ongoing obligation of owner of electric distribution systems**

**104(1)** An owner of an electric distribution system may make arrangements under which other persons perform any or all of the duties or functions of the owner under this Act and the regulations.

**(2)** No arrangement under subsection (1) affects or reduces the responsibility or liability of the owner to carry out those duties or functions.

**Duties of owners of electric distribution systems**

**105(1)** The owner of an electric distribution system has the following duties:

- (a) to provide distribution access service that is not unduly discriminatory;
- (b) to make decisions about building, upgrading and improving the electric distribution system for the purpose of providing safe, reliable and economic delivery of electric energy having regard to managing losses of electric energy to customers in the service area served by the electric distribution system;
- (c) to operate and maintain the electric distribution system in a safe and reliable manner;
- (d) if a transmission facility serves only one service area, to arrange for the provision of system access service to customers in that service area, other than customers referred to in section 101(2);
- (e) to install and remove meters and perform metering, including verifying meter readings and verifying accuracy of meters;
- (f) to maintain information systems relating to the consumption of electricity by customers;
- (g) to provide to a retailer or the owner's regulated rate provider sufficient, accurate and timely information about the retailer's or the regulated rate provider's customers, including metering information about the electricity consumed by those customers in order to enable the retailer or regulated rate provider to bill and to respond to inquiries and complaints from customers concerning billing for electricity services;
- (h) to undertake financial settlement with the Independent System Operator for system access service;
- (i) to act as a regulated rate provider to eligible customers who pay a regulated rate for electricity;
- (j) to appoint or act as a default supplier, in accordance with the regulations, for eligible customers;
- (k) to connect and disconnect customers and distributed generation in accordance with the owner's approved tariff

and with principles established by the Board regarding distributed generation;

- (l) to carry out distribution tariff billing for distribution access service under a distribution tariff;
- (m) to respond to inquiries and complaints from customers respecting distribution access service.

**(2)** Each owner of an electric distribution system must, in accordance with the regulations made by the Minister under section 108, maintain the records and provide the records to the persons specified in the regulations.

#### **Limitation on functions performed by electric distribution system owners**

**106** An owner of an electric distribution system shall not carry out any function required or permitted by this Act or the regulations to be carried out by a retailer except

- (a) when a retailer has made arrangements under section 112 or 113,
- (b) in respect of electricity services provided under a regulated rate tariff when the owner acts as a regulated rate provider, or
- (c) if the owner is authorized under the regulations made by the Minister under section 108 to carry out that function.

#### **Continuation of tariff rules**

**107(1)** A distribution tariff of the owner of an electric distribution system that is a municipality or a subsidiary of a municipality

- (a) that has an affiliated retailer that provides retail electricity services outside the service area of the municipality, or
- (b) that provides distribution access service outside the service area of the municipality either on its own behalf or on behalf of another owner,

does not cease to have effect on the coming into force of this Part, but ceases to have effect on December 31, 2003, unless the tariff expires earlier.

(2) A regulated rate tariff of the owner of an electric distribution system

- (a) that is a municipality or a subsidiary of a municipality that has an affiliated retailer that provides retail electricity services outside the service area of the municipality, or
- (b) that is a rural electrification association that has an affiliated retailer that provides retail electricity services to customers who are not members of a rural electrification association,

does not cease to have effect on the coming into force of this Part, but ceases to have effect on December 31, 2003, unless the tariff expires earlier.

(3) If a distribution tariff referred to in subsection (1) or a regulated rate tariff referred to in subsection (2) expires before December 31, 2003, the *Electric Utilities Act*, RSA 2000 cE-5, continues to apply in respect of that tariff until December 31, 2003, as if that Act had not been repealed.

### Regulations

**108** The Minister may make regulations

- (a) respecting the planning and expansion of electric distribution systems;
- (b) adding to, clarifying, limiting or restricting any of the duties or functions of the owner of an electric distribution system and the manner in which the duties or functions are to be carried out;
- (c) respecting the responsibilities of an owner of an electric distribution system
  - (i) to maintain records, the matters in respect of which a record must be maintained and the persons to whom the information must or may be provided;
  - (ii) to develop and offer non-discriminatory distribution tariffs;
  - (iii) to carry out billing;
  - (iv) to perform metering and to maintain information systems, including frequency of meter reading cycles, use of automated meter reading software and equipment,

- and access to meter data for retailers, the owner's regulated rate provider or customers;
- (d) enabling persons other than owners of electric distribution systems to maintain information systems;
  - (e) respecting the matters that must be included in agreements or arrangements between owners of electric distribution systems and retailers, or the terms and conditions that must be included, or both, including:
    - (i) the performance security the owners may require retailers to provide;
    - (ii) the exchange of information required between owners and retailers;
    - (iii) matters related to billing and the maintenance of information systems;
  - (f) respecting the terms and conditions that must be included or form part of any agreement or arrangement between
    - (i) owners of electric distribution systems and customers, and
    - (ii) owners and retailers or regulated rate providers;
  - (g) establishing a code of conduct governing the relationship between
    - (i) an owner of an electric distribution system and its regulated rate provider,
    - (ii) an owner and its affiliated retailers, or
    - (iii) the owner's regulated rate provider and an affiliated retailer,or any aspect of the activities of the parties in the relationship;
  - (h) respecting the agreements or arrangements between owners of electric distribution systems and eligible customers who pay a regulated rate;
  - (i) respecting regulated rate tariffs;
  - (j) exempting a regulated rate provider from ISO rules that require providing financial security in respect of electric

energy acquired by the regulated rate provider to meet its obligations under the regulated rate tariff;

- (k) replacing a regulated rate tariff with a default supply option;
- (l) respecting the circumstances under which a person becomes a default supplier, the manner in which that occurs and the rights and obligations of default suppliers;
- (m) respecting the rights and obligations of customers;
- (n) respecting the accuracy of billing by regulated rate providers;
- (o) defining “eligible customers”, “rate classification customers”, “affiliated retailer” and “default supplier”.

## **Part 8 Retail**

### **Medicine Hat**

**109** Nothing in this Part applies

- (a) to the electric distribution system owned by the City of Medicine Hat or a subsidiary of the City in the service area of the City, or
- (b) to customers whose property is located in the service area of the City of Medicine Hat

unless the City or a subsidiary of the City

- (c) has an affiliated retailer that provides retail electricity services outside the service area of the City, or
- (d) provides distribution access service outside the service area of the City.

### **Customer's right to purchase from retailer**

**110** Subject to this Act and the regulations, a customer has the right to obtain retail electricity services from a retailer.

**Functions of retailers****111(1)** Retailers must

- (a) maintain records and accounts of their customers respecting the provision of retail electricity services;
- (b) make a reasonable effort to collect amounts owing for retail electricity services before discontinuing retail electricity services to a customer;
- (c) arrange for the exchange or purchase of electric energy on behalf of their customers;
- (d) arrange for distribution access service on behalf of their customers, including entering into agreements or arrangements with owners of electric distribution systems;
- (e) respond to inquiries and complaints from their customers about retail electricity services.

**(2)** Retailers may

- (a) provide retail electricity services to customers;
- (b) exchange electric energy through the power pool on behalf of their customers.

**Billing****112(1)** Only a retailer may bill a customer unless

- (a) the retailer with the owner's consent authorizes the owner of an electric distribution system to charge customers directly under the owner's distribution tariff, or
- (b) the regulations made by the Minister under section 115 provide otherwise.

**(2)** The authorization shall not restrict the manner in which the owner charges customers under its distribution tariff.

**Authorization of another person**

**113(1)** A retailer may make arrangements under which other persons perform any or all of the functions of the retailer under this Act or the regulations.

(2) No arrangement under subsection (1) affects or reduces the responsibility or liability of the retailer in relation to carrying out those functions.

#### **Self retailer**

**114** A customer may carry out the functions of a retailer to obtain electricity for the customer's own use.

#### **Regulations**

**115** The Minister may make regulations

- (a) respecting the manner in which functions of retailers are to be carried out, including their rights and obligations and codes and standards governing their conduct;
- (b) adding to, clarifying, limiting or restricting any of the functions of a retailer and the manner in which the functions are to be carried out;
- (c) enabling persons other than owners of electric distribution systems to maintain information systems and respecting the compilation and dissemination of and access to information in those systems;
- (d) respecting the responsibility of retailers to carry out billing or the accuracy of billing by retailers, or both;
- (e) establishing a code of conduct governing the behaviour of a retailer providing a regulated rate on behalf of an owner of an electric distribution system;
- (f) requiring retailers to be registered, with whom, and the information to be provided on registration and periodically after registration, registration renewal, the performance security to be provided by retailers, conditions on registration, the circumstances under which registration is suspended or cancelled and the effect of the suspension or cancellation of registration;
- (g) adding to the definition of electricity services;
- (h) respecting information that must be provided by retailers to persons specified in the regulations.

## **Part 9 Regulation by the Board**

### **Division 1 General Matters**

#### **Application of this Part**

**116(1)** This Part applies

- (a) to electric utilities operating in Alberta,
- (b) to owners of electric utilities operating in Alberta,
- (c) to electric utilities owned by the Crown, and
- (d) to the ISO tariff.

**(2)** In this Part, “tariff application” means an application to the Board under section 119(1) for approval of the tariff of an owner of an electric utility or the ISO tariff.

#### **Exemptions**

**117(1)** The Board may make rules

- (a) exempting any facility or class of facilities from the definition of electric utility, or
- (b) exempting from all or any provision of this Act and the regulations the electric energy produced from and consumed by an industrial system, and may impose terms and conditions on the exemption.

**(2)** If the Board designates the whole or any part of an electric system as an industrial system under section 4(5) of the *Hydro and Electric Energy Act* and is considering making a rule under subsection (1)(b) in relation to that industrial system, the Board may impose the condition that the owner of the industrial system be responsible for paying a just and reasonable share of the costs associated with the interconnected electric system.

#### **Duty to keep accounts and records**

**118(1)** An owner of an electric utility must, with respect to the electric utility,

- (a) maintain records and accounts in a manner that provides a reasonable understanding of the operation of the electric

utility, including keeping track separately of the costs and expenses of

- (i) transmission facilities, and
- (ii) electric distribution systems,

- (b) provide, when requested by the Board, a detailed report of finances and operations relating to the electric utility in the form, containing the information and verified in the manner the Board requires, and
- (c) subject to any order of the Board, maintain proper and adequate depreciation, amortization or depletion accounts using any basis or method the Board directs.

(2) The Board may make rules respecting the information required to be filed with the Board and the person required to file it, including

- (a) forecasts, and
- (b) separate information in relation to transmission, distribution, exchange, purchase or sale of electric energy when one or more of those functions is undertaken by the same person.

(3) The Independent System Operator must, with respect to the transmission system, maintain the records and accounts and provide the reports required by the Board.

## **Division 2 Approval of Tariffs**

### **Preparation of tariffs**

**119(1)** Each owner of an electric utility must prepare a tariff in accordance with this Act and the regulations and apply to the Board for approval of the tariff.

(2) An owner of an electric utility that makes a tariff application and that also owns isolated generating units must include the costs and expenses related to the isolated generating units in the application in accordance with the regulations.

(3) If the owner of an electric utility appoints a person to prepare a tariff on its behalf, that person must prepare the tariff and apply to the Board for approval of the tariff.

(4) The Independent System Operator must prepare a tariff relating to the transmission system in accordance with Part 2 and apply to the Board for approval of the tariff.

**Tariff contents**

**120(1)** A tariff must describe how it may change over the period for which it is intended to have effect.

(2) A tariff may provide

- (a) that it is in effect for a fixed period or an indefinite period;
- (b) for maximum rates;
- (c) for increases or decreases in the rates to correspond to
  - (i) increases or decreases in fuel costs, taxes or other costs and expenses,
  - (ii) price indices, rates of inflation or similar measurements, and
  - (iii) other related costs or expenses approved by the Board;
- (d) for incentives for efficiencies that result in cost savings or other benefits that can be shared in an equitable manner between the owner of the electric utility and customers.

**Matters the Board must consider**

**121(1)** On giving notice to interested parties, the Board must consider each tariff application.

(2) When considering whether to approve a tariff application the Board must ensure that

- (a) the tariff is just and reasonable,
- (b) the tariff is not unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this or any other enactment or any law, and
- (c) if the regulations so require, the tariff incorporates the standard of liability imposed by the regulations made by the Lieutenant Governor in Council under section 94, or that the Board has, in accordance with those regulations, considered

and imposed a standard of legal liability that it considers appropriate.

(3) A tariff that provides incentives for efficiency is not unjust or unreasonable simply because it provides those incentives.

(4) The burden of proof to show that a tariff is just and reasonable is on the person seeking approval of the tariff.

#### **Costs and expenses recovered under a tariff**

**122(1)** When considering a tariff application, the Board must have regard for the principle that a tariff approved by it must provide the owner of an electric utility with a reasonable opportunity to recover

- (a) the costs and expenses associated with capital related to the owner's investment in the electric utility, including
  - (i) depreciation,
  - (ii) interest paid on money borrowed for the purpose of the investment,
  - (iii) any return required to be paid to preferred shareholders of the electric utility relating to the investment,
  - (iv) a fair return on the equity of shareholders of the electric utility as it relates to the investment, and
  - (v) taxes associated with the investment,

if the costs and expenses are prudent and if, in the Board's opinion, they provide an appropriate composition of debt and equity for the investment,

- (b) other prudent costs and expenses associated with isolated generating units, transmission, exchange or distribution of electricity or associated with the Independent System Operator if, in the Board's opinion, they are applicable to the electric utility,
- (c) amounts that the owner is required to pay under this Act or the regulations,
- (d) the costs and expenses applicable to the electric utility that arise out of obligations incurred before the coming into force of this section and that were approved by the Public Utilities Board, the Alberta Energy and Utilities Board or other utilities' regulatory authorities if, in the Board's

opinion, the costs and expenses continue to be reasonable and prudently incurred,

- (e) its prudent costs and expenses of complying with the ISO rules respecting load settlement,
- (f) its prudent costs and expenses respecting the management of legal liability,
- (g) the costs and expenses associated with financial arrangements to manage financial risk associated with the pool price if the arrangements are, in the Board's opinion, prudently made, and
- (h) any other prudent costs and expenses that the Board considers appropriate, including a fair allocation of the owner's costs and expenses that relate to any or all of the owner's electric utilities.

**(2)** When the Independent System Operator is the applicant for tariff approval, the Board must have regard for the principle that a tariff approved by it must provide the Independent System Operator with a reasonable opportunity to recover all of the items referred to in subsection (1) that are applicable to the Independent System Operator.

**(3)** The Board shall not decide that the ISO tariff fails to satisfy the requirements of section 121(2)(a) or (b) simply because the tariff provides for the flow through, including by the use of deferral accounts, real time pricing or other mechanisms, of some or all of the Independent System Operator's prudent costs and expenses of carrying out its duties, responsibilities and functions.

#### **Retrospective tariff**

**123** When considering whether to approve a tariff that is to have effect from a date preceding its consideration of the tariff application, the Board may take into account evidence relating to revenues received and costs and expenses incurred by the applicant in the whole or part of the year in which the application is made.

#### **Powers of Board**

**124(1)** In respect of each tariff application, the Board may, subject to section 135,

- (a) approve a tariff or any part of it with or without changes, or

(b) refuse to approve a tariff or any part of it.

(2) An approval may be for an interim period specified by the Board.

#### **Tariff must be approved**

**125** The owner of an electric utility and the Independent System Operator shall not put into effect a tariff that has not been approved by the Board.

#### **Review of tariff**

**126(1)** Unless section 26 of the *Alberta Energy and Utilities Board Act* applies, no order of the Board approving a tariff may be reviewed, rescinded or varied during the period in which the tariff is intended to have effect, except in accordance with this section.

(2) Any person affected by an order approving a tariff may ask the Board to review the order

- (a) if the terms or conditions provided by the tariff for discontinuing the rates have been met and the order provides for a review under this section in those circumstances,
- (b) if the owner of the electric utility or the Independent System Operator has breached a term or condition of the tariff in a material manner,
- (c) if, since the date of the order, circumstances have changed in a substantial and unforeseen manner that renders the continuation of the tariff unjust and unreasonable, or
- (d) if, in the Board's opinion, the order contains an error of fact or law, and if the request for a review on that ground is filed with the Board not later than 90 days after the making of the order.

(3) Sections 46(1), 47, 64, 85(1) and 87 of the *Public Utilities Board Act* do not apply to the review of an order by the Board under subsection (2).

#### **Obligations of owners of electric utilities and the Independent System Operator**

**127** The owners of an electric utility and, in respect of the ISO tariff, the Independent System Operator

- (a) must provide and maintain service that is safe, adequate and proper,
- (b) shall not withhold a service that the Board has ordered it to provide, and
- (c) shall not act in a manner that is unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this or any other enactment or any law.

**Board funding rules**

**128(1)** The Board may make rules respecting funding for the purpose of assisting any person

- (a) to apply or become an intervenor in a tariff application or at a proceeding under section 126,
- (b) to make a complaint or become an intervenor at the hearing of a complaint under this Part, and
- (c) to become a party to an issue for the purpose of negotiating the settlement of an issue.

**(2)** A rule under subsection (1) is in addition to and not in substitution for any other jurisdiction the Board has to provide funding and may provide for

- (a) the awarding of funding and the giving of advance funding,
- (b) clarification of who is to pay the funding and to whom it is to be paid, and
- (c) the review of any funding awarded.

**Service quality standards**

**129(1)** The Board may make rules respecting service quality standards for each electric utility including all or any of the following:

- (a) the standard of service to be maintained and how the standard is to be measured;
- (b) service outages;

- (c) upgrades required to maintain and improve distribution facilities;
- (d) the regular or periodic maintenance of electricity utilities and repairs;
- (e) customer care and call centre services to be provided for customers;
- (f) the billing and billing services to be provided to customers;
- (g) any matter related to public safety.

**(2)** On application or on its own initiative, the Board may investigate to determine whether the owner of an electric utility is meeting the rules respecting service quality standards.

**(3)** If the Board is of the opinion that the owner of an electric utility has failed or is failing to meet the rules respecting service quality standards, the Board may, in addition to exercising its authority under section 145, by order do all or any of the following:

- (a) direct the owner to take any action to improve services that the Board considers just and reasonable;
- (b) direct the owner to provide the customer with a credit, of an amount specified by the Board, to compensate the customer for the owner's failure to meet the rules respecting service quality standards;
- (c) prohibit the owner from engaging in any activity or conduct that the Board considers to be detrimental to customer service;
- (d) impose an administrative penalty, to be paid to the Balancing Pool, of
  - (i) not more than \$100 000 a day for each day that a service quality standard rule is not met or complied with, or
  - (ii) not more than \$500 000 for each contravention of a rule.

**(4)** An order of the Board under this section may be appealed in accordance with the *Alberta Energy and Utilities Board Act*.

#### **Enforcement of service quality orders**

**130(1)** Subject to the right to appeal an administrative penalty, if a person fails to pay an administrative penalty in accordance with the

order imposing it, the Board may file a copy of the order with the clerk of the Court of Queen's Bench and, on being filed, the order has the same force and effect and may be enforced by the Board as if it were a judgment or order of the Court.

(2) Subject to the right of appeal, the Board may apply to the Court of Queen's Bench to enforce a Board order, other than an order to pay an administrative penalty, on giving notice of the application to the person against whom enforcement is sought, in accordance with the *Alberta Rules of Court*.

(3) An application under subsection (2) must be accompanied with the original Board order or a certified copy of it.

(4) The Court of Queen's Bench may give judgment enforcing a Board order unless

- (a) the order is the subject of an appeal under the *Alberta Energy and Utilities Board Act*,
- (b) the order is the subject of judicial proceedings that put it in question, or
- (c) the order is not capable of enforcement in law.

#### **Offence for non-compliance with Board orders**

**131(1)** A person who fails to comply with a Board order under section 129 is guilty of an offence and is liable to a fine of not more than \$100 000 a day for each day during which non-compliance continues.

(2) In addition to a fine under this section, the court may order the market participant to pay to the Balancing Pool any administrative penalty imposed on it by the Board order.

### **Division 3 Negotiated Settlement of an Issue**

#### **Facilitated negotiation**

**132(1)** The Board must recognize or establish rules, practices and procedures that facilitate

- (a) the negotiated settlement of matters arising under this Act or the regulations, and

(b) the resolution of complaints or disputes regarding matters arising under this Act or the regulations.

(2) Before recognizing or establishing rules, practices and procedures that affect the Independent System Operator or the Market Surveillance Administrator, the Board must consult with those corporations.

(3) The rules, practices and procedures recognized or established under this section apply whether or not an application relating to an issue has been made to the Board.

#### **Powers of Board**

**133** As part of the rules, practices and procedures for negotiated settlement of matters or the resolution of complaints or disputes, the Board may

- (a) provide for the appointment of mediators to assist parties in negotiating the settlement of an issue;
- (b) provide for the appointment of employees of the Board as mediators;
- (c) provide for employees of the Board to attend the settlement process;
- (d) recognize or establish rules to ensure that the parties to an issue receive
  - (i) adequate notice of the settlement process and the matters in issue,
  - (ii) adequate disclosure of the positions of the parties and the basis for those positions, and
  - (iii) an appropriate opportunity to participate in the settlement process;
- (e) recognize or establish rules governing the extent to which persons who are not parties or classes of persons who are not parties may participate in the settlement of an issue;
- (f) provide that, before an issue may become the subject of a hearing before the Board, the parties must attempt to negotiate a settlement of the issue in accordance with the Board's rules, practices and procedures;

- (g) determine whether any costs of negotiating the settlement of an issue are payable and, if so, by whom and to whom the costs are to be paid.

**Board approval of a settlement**

**134(1)** If a settlement has been negotiated of an issue that is within the jurisdiction of the Board, the Board may approve the settlement.

**(2)** Any issue dealt with in a settlement approved by the Board is not subject to further consideration in the hearing of the matter to which the settlement relates.

**(3)** Subject to subsection (4), the Board may require a party to provide to it any records relating to the settlement that it considers appropriate.

**(4)** The Board shall not receive or consider any submission, position, evidence or information provided by a party on a without prejudice or confidential basis in the course of negotiating a settlement under this Part without the express consent of that party.

**Limit on Board discretion**

**135** If the parties negotiate a settlement on the basis that the settlement is contingent on the Board's accepting the entire settlement, the Board must either approve the entire settlement or refuse it.

**Limit on mediators and facilitators**

**136** No person acting as a mediator or facilitator of a negotiated settlement or resolution of a complaint or dispute may participate in any proceedings of the Board arising from or relating to the issue without the express consent of all the parties to the issue.

**Board discretion**

**137(1)** When considering a settlement that has been negotiated, the Board

- (a) may accept confidential records from the parties to an issue and, on acceptance, must maintain the confidentiality of the records, and

- (b) may participate in or hold any discussions in private if the Board considers it necessary and if all parties to the issue have notice of the discussions.

(2) The duty of the Board to maintain the confidentiality of records provided to the Board under subsection (1)(a) prevails despite the *Freedom of Information and Protection of Privacy Act* for a period of at least 10 years following the end of the year in which the negotiated settlement to which the documents or information relates has completely expired.

#### **Division 4 Municipally Owned Electric Utilities**

##### **Bylaw bringing utility under this Act**

**138(1)** Any municipality that owns an electric distribution system may, by bylaw, provide that the system is an electric utility under this Act.

(2) The bylaw passed has no effect unless it is approved by the Lieutenant Governor in Council.

(3) If a bylaw has been passed and approved under this section or if the electric distribution system of a municipality is an electric utility under this Act, the municipality may, notwithstanding the bylaw or anything in this Act, impose amounts in respect of its electric distribution system that are in addition to the rates approved by the Board if the bills submitted to customers

- (a) clearly distinguish between the rates approved by the Board and the additional amounts imposed by the municipality, and
- (b) identify the additional amounts imposed by the municipality as a surcharge or tax.

#### **Division 5 Rights Granted by a Municipality**

##### **Grant of right to distribute electric energy**

**139(1)** A right to distribute electricity granted by a municipality

- (a) to an owner of an electric distribution system has no effect unless the grant is approved by the Board;
- (b) to a subsidiary of the municipality does not require Board approval.

- (2) The Board may approve the grant of a right to distribute electricity when, after hearing the interested parties or with the consent of the interested parties, the Board determines that the grant is necessary and proper for the public convenience and to properly serve the public interest.
- (3) The Board may, in giving its approval, impose any conditions as to construction, equipment, maintenance, service or operation that the public convenience and the public interest reasonably require.
- (4) A municipality shall not grant to another municipality or to a corporation controlled by another municipality the right to distribute electricity to customers in the granting municipality unless the grant
- (a) is approved by the Board, and
  - (b) is authorized by regulations under subsection (5).
- (5) On the recommendation of the Minister that a grant described in subsection (4) is, in the Minister's opinion, in the public interest, the Lieutenant Governor in Council may make regulations authorizing the grant and respecting any conditions that apply to the grant.
- (6) For the purpose of subsection (4), a corporation is controlled by a municipality if the test set out in section 1(2) of the *Municipal Government Act* is met.

**Limits on approval of grants**

- 140** The Board shall not approve a grant under section 139 unless
- (a) it is a term of the grant that the grant does not prevent the Crown from exercising that right,
  - (b) the person seeking the grant has satisfied the Board that the proposed scheme for the distribution of electricity is reasonable and sufficient, having regard to the general circumstances, and
  - (c) the Board is satisfied that the grant is to the general benefit of the area directly or indirectly affected by it.

**Grant to person outside Alberta**

**141(1)** No municipality may grant to a person that is not subject to the legislative authority of Alberta a right to operate, manage or control any plant, works, equipment, systems or services for the transmission, distribution or provision of electricity, either directly or indirectly, in all or part of the municipality.

**(2)** Subsection (1) does not apply if the grant contains a provision, approved by the Board, that the person to whom the right is granted agrees to submit its business and operations to the control and supervision of the Board in the same manner and to the same extent as if that person were an owner of an electric utility.

**(3)** A right granted by a municipality contrary to this section is void.

## **Part 10 General Matters**

**Regulations**

**142(1)** The Lieutenant Governor in Council may make regulations

- (a) defining any word or expression that is used but not defined in this Act or in regulations made by the Minister;
- (b) dealing with any difficulty or impossibility resulting from the coming into force of this Act or the transition to this Act from the *Electric Utilities Act*, RSA 2000 cE-5;
- (c) respecting the treatment of the rights and obligations of rural electrification associations under contracts that were in existence on April 30, 1998 and that are made with owners of electric utilities, where the rights and obligations are necessary or advisable to carry out the purposes of this Act;
- (d) respecting the authority of the Minister to extend dates or lengthen periods expressly specified in this Act, whether the date or the period specified in the Act has or has not expired;
- (e) respecting costs relating to reclamation of a hydro facility and who is to pay those costs in the event that the Government of Alberta requires that a hydro facility be reclaimed;
- (f) authorizing a supervisory authority named in the regulations to impose administrative penalties of not more than \$100 000 a day and to impose other sanctions and orders for

contravention of or to enforce compliance with regulations made under this Act, and conferring authority on the Court of Queen's Bench to enforce the penalties, orders or other sanctions;

- (g) respecting the conversion or transition to this Act of anything from the *Electric Utilities Act*, RSA 2000 cE-5;
- (h) requiring the City of Medicine Hat or a subsidiary of the City to provide information or statements of compliance to the chair of the Board, including certifying or confirming the accuracy of information or compliance statements provided, respecting sections 2(1)(a), 37(2)(a), 95, 100, 109, 153(1) or other sections of this Act which apply to the City or a subsidiary of the City or which exempt the City or a subsidiary of the City from this Act;
- (i) respecting regulatory oversight of the regulated rate tariff for municipalities and rural electrification associations that do not have affiliated retailers;
- (j) requiring the owner of an electric distribution system to apply to the Board for approval of a regulated rate tariff despite section 103(3) and (4);
- (k) requiring rates for the ISO's tariff as set out in section 30(3)(a) to apply to market participants in addition to those market participants described in section 30(3)(a);
- (l) respecting the use of the interconnected electric system for the import and export of electricity, including the implementation of principles and requirements related to the import and export of electricity;
- (m) setting out the principles and criteria that the Board must or may have regard for when considering approval of a needs identification document described in section 34 or when considering approval of an expansion or enhancement of the transmission system.

**(2)** The Lieutenant Governor in Council may make regulations

- (a) respecting any matter that the Minister considers
  - (i) is not provided for or is insufficiently provided for in this Act, or
  - (ii) is necessary or advisable in connection with the implementation of this Act;

- (b) exempting any person or class of persons from any provision of this Act or the regulations and prescribing conditions or restrictions on the exemption;
  - (c) conferring or imposing on any person or class of persons engaged in the supply, generation, transmission, distribution, trade, exchange, purchase or sale of electricity, electric energy, electricity services or ancillary services any power, duty, responsibility or function necessary to carry out the purposes of this Act;
  - (d) adding to, clarifying, limiting or restricting any power, duty, responsibility or function conferred or imposed on any person or class of persons under this Act or regulating how they are to be exercised, despite any other provision of this Act or the regulations;
  - (e) allocating, determining, fixing or prescribing anything required by this Act to be allocated, determined, fixed or prescribed, including the manner of allocation, determination, fixing or prescription, if not specified in this Act;
  - (f) respecting any matters, in addition to or in place of those specified in this Act, to be considered by the Board in making an order under this Act;
  - (g) suspending the operation of any provision of this Act or making any provision of this Act inapplicable if, in the Minister's opinion, that is necessary or advisable to carry out the purposes of this Act.
- (3)** A regulation made under subsection (2) is repealed on the earliest of
- (a) the coming into force of an amendment to this Act that adds the matter to this Act,
  - (b) the coming into force of a regulation that repeals the regulation made under subsection (2), and
  - (c) 5 years after the regulation comes into force.
- (4)** The repeal of a regulation under subsection (2) does not affect anything done, incurred or acquired under the authority of the regulation.

**Extent of regulations**

**143** Any regulation made by the Minister or the Lieutenant Governor in Council under this Act may

- (a) be specific or general in its application and include conditions, restrictions and limitations;
- (b) apply to all or any part of Alberta;
- (c) impose or confer on any person named in the regulations any power, duty, responsibility or function in respect of the regulation;
- (d) adopt or declare to be in force any code or standard, with or without modifications, specified or described in the regulation.

**Administrative penalties and offences**

**144** A person who is ordered to pay an administrative penalty under section 22, 67 or 129 or under a regulation made under section 142(1)(f) may not be charged under this Act with an offence in respect of the same matter except an offence for non-payment of the administrative penalty.

**Public Utilities Board Act and Alberta Energy and Utilities Board Act**

**145** The provisions of the *Public Utilities Board Act* and the *Alberta Energy and Utilities Board Act* relating to hearings, service of notices or orders, regulations, rules and procedure, enforcement of orders and the rights, powers, privileges and immunities of the Public Utilities Board and the Alberta Energy and Utilities Board apply to the Alberta Energy and Utilities Board as if they were provisions of this Act.

**Regulations Act – non-application**

**146** The *Regulations Act* does not apply to

- (a) ISO bylaws or the ISO rules;
- (b) Balancing Pool bylaws.

**Payment in lieu of income tax**

**147(1)** In this section, “municipal entity” means

- (a) each municipality that
  - (i) owns a retailer,
  - (ii) holds a power purchase arrangement, or
  - (iii) holds an agreement or arrangement derived from a power purchase arrangement that includes the right to exchange electric energy and ancillary services;
- (b) each retailer that is a subsidiary of a municipality;
- (c) each holder of a power purchase arrangement that is a subsidiary of a municipality;
- (d) each holder of an agreement or arrangement derived from a power purchase arrangement that includes the right to exchange electric energy and ancillary services that is a subsidiary of a municipality.

**(2)** If the regulations under subsection (8) so provide, “municipal entity” also includes:

- (a) each municipality or subsidiary of a municipality that owns an electric distribution system;
- (b) each municipality or subsidiary of a municipality that provides a regulated rate tariff;
- (c) each municipality or subsidiary of a municipality that owns a transmission facility.

**(3)** If a municipal entity is exempt as a result of subsection 149(1) of the *Income Tax Act* (Canada) from the payment of tax under that Act or the *Alberta Corporate Tax Act*, it must, in accordance with the regulations, pay to the Balancing Pool in respect of each taxation year an amount equal to the amount of tax that it would be liable to pay under

- (a) the *Income Tax Act* (Canada), and
- (b) the *Alberta Corporate Tax Act*,

if it were not exempt.

**(4)** Revenue received by a municipal entity

- (a) from an electric distribution system owned by it,
- (b) from a customer who chooses to purchase electricity under a regulated rate tariff, or
- (c) from a transmission facility owned by it,

shall not be considered income received by a municipal entity for the purposes of subsection (3) unless required by the regulations made under subsection (8).

**(5)** Subsection (3) does not apply to the City of Medicine Hat or to a subsidiary of the City.

**(6)** The City of Medicine Hat and each subsidiary of the City must pay to the Balancing Pool an amount calculated in accordance with the regulations made under subsection (8).

**(7)** If the City of Medicine Hat or a subsidiary of the City is subject to payment of tax under the *Income Tax Act* (Canada) or the *Alberta Corporate Tax Act*, subsection (6) does not apply to the City or its subsidiary.

**(8)** The Lieutenant Governor in Council may make regulations for the purposes of this section, including regulations

- (a) respecting the calculation of the amount to be paid to the Balancing Pool under subsection (3);
- (b) respecting the interval for payment of the amount to be paid to the Balancing Pool;
- (c) making this section applicable to any of the municipal entities described in subsection (2) and the revenue described in subsection (4);
- (d) respecting the calculation of amounts to be paid to the Balancing Pool by the City of Medicine Hat or a subsidiary of the City;
- (e) making any provisions of the *Income Tax Act* (Canada) and the *Alberta Corporate Tax Act* and regulations under either or both enactments, with or without modifications, applicable to the person named in the regulations.

**(9)** A regulation made under subsection (8) may provide for the retroactive application of the regulation, but not to a date earlier than January 1 of the year in which the regulation is made.

**Approved professional costs**

**148(1)** The Minister may approve the professional and other costs relating to the development and implementation of this Act, amendments to this Act and regulations under this Act, including costs relating to advancing the purposes of this Act and regulations.

**(2)** Costs approved by the Minister under subsection (1) must be paid by the Balancing Pool.

**Advisory committee**

**149(1)** The Minister may establish a committee under section 7 of the *Government Organization Act*.

**(2)** The Minister must appoint as members of the committee such corporations, municipalities, organizations or individuals as may, in the opinion of the Minister, be necessary or desirable to ensure that the membership of the committee is representative of persons having a material interest in the Alberta electric industry.

**(3)** Each corporation, municipality and organization that is a member of the committee must nominate an individual to serve as its representative on the committee and may nominate different individuals for that purpose from time to time.

**General offence**

**150(1)** Except as otherwise provided in this Act, a person who knowingly contravenes a provision of this Act or the regulations is guilty of an offence and is liable to a fine of not more than \$500 000.

**(2)** Except as otherwise provided in this Act, a person who does not comply with an order of the Board is guilty of an offence and is liable to a fine of not more than \$100 000 a day for each day during which non-compliance continues.

**Part 11**  
**Transitional Provisions,**  
**Consequential Amendments and**  
**Coming into Force**

**Division 1**  
**Transitional Provisions**

**Transition of Power Pool Council and  
Transmission Administrator**

**151(1)** In this section,

- (a) “assets and liabilities” means all rights, property, assets, obligations and liabilities whatsoever, including without limitation contingent assets and liabilities and all agreements and arrangements;
- (b) “balancing pool” means the balancing pool established by the *Balancing Pool Regulation* (AR 169/99);
- (c) “balancing pool administrator” has the meaning given to it by the *Balancing Pool Regulation* (AR 169/99);
- (d) “decisions” means an order, interim order, decision, fine or sanction made or imposed before the coming into force of this section by the Power Pool Council or the balancing pool administrator under the previous Act or the regulations under that Act;
- (e) “Power Pool Council” means the Power Pool Council that existed under the previous Act before the coming into force of this section;
- (f) “previous Act” means the *Electric Utilities Act*, RSA 2000 cE-5.

**(2)** Within 15 days of the coming into force of this section, the Power Pool Council must determine:

- (a) the allocation among the Independent System Operator, the Market Surveillance Administrator and the Balancing Pool of the assets and liabilities of the Power Pool Council, and
- (b) the designation among the Independent System Operator, the Market Surveillance Administrator and the Balancing Pool of its decisions and of the decisions of the balancing pool administrator.

**(3)** In making the determination, the Power Pool Council must have regard for the following:

- (a) the assets and liabilities of the Power Pool Council that relate to a duty, responsibility or power of the Independent System Operator are to be the assets and liabilities of the Independent System Operator;
  - (b) the assets and liabilities of the Power Pool Council that relate to the mandate or a responsibility or power of the Market Surveillance Administrator are to be the assets and liabilities of the Market Surveillance Administrator;
  - (c) the assets and liabilities of the Power Pool Council that relate to a duty, responsibility or power of the balancing pool are to be the assets and liabilities of the Balancing Pool;
  - (d) the decisions that relate to a duty, responsibility or power of the Independent System Operator are to be orders of the Independent System Operator;
  - (e) the decisions that relate to the mandate or a responsibility or power of the Market Surveillance Administrator are to be orders of a tribunal;
  - (f) the decisions that relate to the balancing pool or to a duty, responsibility or power of the balancing pool administrator are to be decisions of the Balancing Pool.
- (4)** On the later of
- (a) the coming into force of Parts 2, 3 and 4, and
  - (b) the determination being made by the Power Pool Council under subsection (2),
- as the case requires,
- (c) the assets and liabilities of the Power Pool Council are the assets and liabilities of the Independent System Operator, the Market Surveillance Administrator and the Balancing Pool, respectively, in accordance with the determination made by the Power Pool Council, and
  - (d) the decisions are continued as orders of the Independent System Operator, as tribunal orders or as decisions of the Balancing Pool, as the case may be, in accordance with the determination made by the Power Pool Council.
- (5)** Despite the repeal of the previous Act, the Power Pool Council is continued for the purpose of making the determination required by subsection (2).

- (6) A determination made by the Power Pool Council under subsection (2) is final, and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.
- (7) Any agreement, arrangement or other instrument in force on the day this section comes into force to which the Power Pool Council is a party does not cease to have effect as a result of the coming into force of this Act.
- (8) The Independent System Operator, the Market Surveillance Administrator or the Balancing Pool, as the case may be, in accordance with the determination made by the Power Pool Council under subsection (2),
- (a) is the successor in interest of the Power Pool Council in an agreement, arrangement or other instrument referred to in subsection (7), and
  - (b) is deemed to be a party to an agreement, arrangement or other instrument referred to in subsection (7) in substitution for the Power Pool Council.
- (9) The rules of the power pool made by the Power Pool Council under section 9 of the previous Act and rules made under the Power Pool Council under any regulations made under that Act are deemed to be ISO rules until the earlier of
- (a) the repeal of those rules by the Independent System Operator under this Act, and
  - (b) 60 days after the coming into force of this section.

**Transmission Administrator assets and liabilities disposition**

**152(1)** In this section,

- (a) “assets and liabilities” means all rights, property, assets, obligations and liabilities whatsoever, including without limitation contingent assets and liabilities and all agreements and arrangements;
- (b) “previous Act” means the *Electric Utilities Act*, RSA 2000 cE-5;
- (c) “Transmission Administrator” means Transmission Administrator of Alberta Ltd.

- (2) On the coming into force of this section,
- (a) the assets and liabilities of the Transmission Administrator are the assets and liabilities of the Independent System Operator;
  - (b) the tariff of the Transmission Administrator approved under the previous Act is the ISO tariff until a replacement for that tariff is approved under this Act.
- (3) Any agreement, arrangement or other instrument in force on the day this section comes into force to which the Transmission Administrator is a party does not cease to have effect as a result of the coming into force of this Act.
- (4) The Independent System Operator
- (a) is the successor in interest of the Transmission Administrator in an agreement, arrangement or other instrument referred to in subsection (3), and
  - (b) is deemed to be a party to an agreement, arrangement or other instrument referred to in subsection (3), in substitution for the Transmission Administrator.

**Rates for transmission facilities owned by municipalities**

- 153(1)** This section applies only to a municipality or a subsidiary of a municipality, other than the City of Edmonton or the City of Medicine Hat, that owns transmission facilities.
- (2) Despite the repeal of the *Electric Utilities Act*, RSA 2000 cE-5, and despite section 37 of this Act, if the Minister has under section 30 of the *Electric Utilities Act*, RSA 2000 cE-5, approved rates to be paid to the owner of a transmission facility, the rates approved by the Minister apply until the earlier of
- (a) the date specified by the Minister in the order or other instrument approving the rates as the date those rates cease to apply or expire, and
  - (b) December 31, 2005.
- (3) The rates described in subsection (2) are deemed to satisfy the requirements of Part 9 during the period of time that the rates are in effect.

**Continuation of regulations if needed**

**154(1)** The Minister may make regulations continuing, with or without modifications, a regulation made under the *Electric Utilities Act*, SA 1995 cE-5.5 or the *Electric Utilities Act*, RSA 2000 cE-5, as a regulation made under this Act,

- (a) whether or not there exists legislative authority for that regulation under this Act, and
- (b) whether made by the Lieutenant Governor in Council or the Minister.

**(2)** A regulation made under subsection (1) expires 2 years after it is made unless earlier repealed.

**(3)** A regulation made under subsection (1) operates in addition to the provisions of the *Interpretation Act* that govern the continuation of regulations where an enactment is repealed and replaced by a new enactment.

**Continuation of approvals, orders, etc.**

**155** Any approval, order, direction or other determination and any instrument relating to

- (a) an electric utility,
- (b) the owner of an electric utility, or
- (c) the Transmission Administrator

made under the *Public Utilities Board Act*, the *Hydro and Electric Energy Act*, the *Electric Utilities Act*, SA 1995 cE-5.5, or the *Electric Utilities Act*, RSA 2000 cE-5, before the coming into force of this section does not cease to have effect as a result of the coming into force of this Act.

**Deferral account and other definitions**

**156** In sections 157 to 159,

- (a) “deferral account” means
  - (i) in respect of ATCO Electric Ltd., a deferral account established for 2000 referred to in clauses 28, 29, 30 and 31 of the Alberta Power Limited 1999/2000 Phase I Negotiated Settlement dated April 21, 1999 and

approved by the Board in Decision U99046 dated May 10, 1999,

- (ii) in respect of UtiliCorp Networks Canada (Alberta) Ltd., a deferral account established for 2000 referred to in the Summary of Board Directions numbered 58, 59 and 60 in Part 1 – General, of Board Decision U99099 dated November 25, 1999, and
  - (iii) in respect of a municipal owner of an electric distribution system, a reconciliation account for 2000 established for the same purpose as that for which a deferral account referred to in subclause (i) or (ii) is established;
- (b) “municipal owner of an electric distribution system” means
- (i) Enmax Power Corporation,
  - (ii) EPCOR Distribution Inc.,
  - (iii) the City of Lethbridge, and
  - (iv) the City of Red Deer;
- (c) “regulatory authority” means
- (i) in respect of a municipality or a subsidiary of a municipality that owns an electric distribution system, the council of the municipality,
  - (ii) in respect of a rural electrification association, the board of directors of the rural electrification association, or
  - (iii) in respect of any other owner of an electric distribution system, the Board.

#### **Approval of collection**

**157** A regulatory authority may approve the collection by the owner of an electric distribution system of amounts in respect of its deferral accounts during the period January 1, 2002 to December 31, 2004.

#### **Balancing Pool obligations**

**158** The Balancing Pool must pay any amount payable by the Balancing Pool pursuant to a transaction, agreement or obligation

relating to the deferral accounts, reconciliation accounts and the accounts established for similar purposes relating to a regulated rate tariff that the balancing pool administrator entered into, including

- (a) transactions and agreements as principal, obligor, indemnitor, guarantor, surety or assignee of deferral and reconciliation accounts, and
- (b) obligations to make payments in respect of amounts at any time comprising deferral accounts, reconciliation accounts and accounts established for similar purposes, including the collection, financing or purchase by any person of those amounts.

#### **Existing deferral accounts**

**159** The deferral, reconciliation and other accounts referred to in section 158 must relate to the period of time before January 1, 2002.

#### **Application**

**160** Sections 157 and 158 do not apply after December 31, 2004.

#### **ISO tariff in 2003**

**161** When considering whether to approve the tariff of the Transmission Administrator that is to have effect for 2003, the Board must include in that tariff the ability of the Transmission Administrator to recover an amount equal to

- (a) the aggregate of
  - (i) the price paid by the Power Pool Council or its subsidiary to acquire the shares of ESBI Alberta Ltd.,
  - (ii) all reasonable transition costs incurred by the Power Pool Council or its subsidiary related to acquisition of the shares of ESBI Alberta Ltd., and
  - (iii) any additional income or corporate taxes payable by the Transmission Administrator as a result of including the price referred to in subclause (i) and the costs referred to in subclause (ii) in the Transmission Administrator's tariff,

less

- (b) any management fees collected by the Transmission Administrator after the date on which the Power Pool Council or its subsidiary acquires the shares of ESBI Alberta Ltd.

#### **Recovery of costs incurred**

**162** The Independent System Operator must recover the price referred to in section 161(a)(i) and the costs referred to in section 161(a)(ii) after the payment of the additional income or corporate taxes referred to in section 161(a)(iii).

#### **ISO's tariff**

**163** The ISO's tariff is not unjust or unreasonable simply because it includes the amount referred to in section 161.

## **Division 2 Consequential Amendments and Coming into Force**

**164 to 166** *(These sections amend other Acts; the amendments have been incorporated into those Acts.)*

#### **Repeal of regulations**

**167** The following regulations are repealed:

- (a) *Deficiency Correction Regulation, 2002* (AR 53/2002);
- (b) *Direct Sales Regulation* (AR 167/2001);
- (c) *Liability Protection Regulation* (AR 237/2001);
- (d) *Load Curtailment and Reliability Deficiency Correction Regulation* (AR 114/2001);
- (e) *Power Pool Council Deficiency Correction Regulation* (AR 173/2002);
- (f) *Municipal Long Term Electricity Agreement Regulation* (AR 73/2002);
- (g) *Time Extension Regulation* (AR 162/98);

- (h) *Time Extension Regulation* (AR 243/99);
- (i) *Time Extension Order* (AR 198/2000);
- (j) *Transmission Administrator Tariff Deficiency Correction Regulation* (AR 240/2002).

**Repeals**

**168(1)** The *Electric Utilities Act*, RSA 2000 cE-5, is repealed.

**(2)** Sections 156 to 163 of this Act are repealed on Proclamation.

**Coming into force**

**169** This Act comes into force on Proclamation.

*(NOTE: Proclaimed in force June 1, 2003.)*