



Province of Alberta

ELECTRIC UTILITIES ACT

BALANCING POOL REGULATION

Alberta Regulation 158/2003

With amendments up to and including Alberta Regulation 160/2017

Office Consolidation

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(Consolidate up to 160/2017)

ALBERTA REGULATION 158/2003

Electric Utilities Act

BALANCING POOL REGULATION

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Interpretation

1 In this Regulation,

- (a) “Act” means the *Electric Utilities Act*;
- (b) “arrangement” means a power purchase arrangement;
- (c) “derivatives”, in respect of an arrangement, means the rights, entitlements, interests, terms, conditions and obligations forming part of or derived from the arrangement that the Balancing Pool authorizes to be exercised by or grants or assigns to a buyer of the derivative, and includes a transaction, contract or agreement relating to those rights, entitlements, interests, terms, conditions and obligations, but does not include a transfer of the arrangement in whole to the buyer of the derivative;

- (d) “extraordinary event” means
- (i) an event, other than the termination of an arrangement, in respect of which the arrangement provides for a payment to or by the Balancing Pool, or
 - (ii) an event that results in
 - (A) the termination of an arrangement in accordance with its terms and conditions, and
 - (B) the Balancing Pool becoming a party to the arrangement;
- (d.1) “MSA” means the Market Surveillance Administrator continued under section 32 of the *Alberta Utilities Commission Act*;
- (e) “party”, in respect of an arrangement, other than in section 2.1, means
- (i) the owner of the generating unit to which the arrangement applies,
 - (ii) the buyer of the arrangement,
 - (iii) the Balancing Pool, where the arrangement is held by the Balancing Pool in the capacity of buyer pursuant to the Act, or
 - (iv) a successor to the person referred to in subclause (i), (ii) or (iii).

AR 158/2003 s1;196/2016;160/2017

Powers and duties

2(1) The Balancing Pool must carry out the following powers and duties in accordance with the Act, the regulations and any arrangement:

- (a) oversee the payment into the balancing pool accounts of the amounts referred to in section 4;
- (b) oversee the payment out of the balancing pool accounts of the amounts referred to in section 5;
- (c) offer for sale an arrangement held by the Balancing Pool as a party to the arrangement;
- (d) create and offer for sale derivatives in respect of arrangements held by the Balancing Pool and enter into

- financial and other transactions and agreements relating to those derivatives, arrangements and the Balancing Pool;
- (e) exercise any powers and perform any duties that accrue to the Balancing Pool as a party to an arrangement or to the Balancing Pool under an arrangement;
 - (f) exercise, authorize a third party to exercise or grant or assign to a third party any right, entitlement, interest, term, condition or obligation that arises as a result of the Balancing Pool being a party to an arrangement;
 - (g) on receipt of notice in respect of an extraordinary event from a party to an arrangement or otherwise,
 - (i) conduct any investigation the Balancing Pool determines appropriate, and
 - (ii) participate to the extent determined appropriate by the Balancing Pool in any dispute resolution process between parties to the arrangement;
 - (h) when clause (g) applies,
 - (i) agree with the parties to the arrangement that the extraordinary event has occurred and that there is a need for a payment to be made to or by the Balancing Pool, or
 - (ii) assess and verify the occurrence of the extraordinary event and the need for any payment to be made by or to a party under the provisions of the arrangement, and participate in any dispute resolution proceedings under an arrangement pursuant to subsection (2);
 - (i) on receipt of notice under clause (g), begin making payments as set out in an arrangement until all matters arising pursuant to clauses (g) and (h) are agreed to or resolved;
 - (j) make, defend, settle and withdraw claims and counterclaims against the Balancing Pool relating to an arrangement that the Balancing Pool holds as a party to the arrangement;
 - (k) carry out any other powers or duties that are necessary for the administration and operation of the Balancing Pool.
- (2)** Notwithstanding the provisions of an arrangement, and subject to section 2.1, if

- (a) a party to the arrangement disputes a determination by the Balancing pool under subsection (1)(h)(ii), or
- (b) the Balancing Pool disputes that an extraordinary event has occurred or that a payment to or by the Balancing Pool should be made under the provisions of the arrangement,

the dispute must be resolved by the dispute resolution process set out in the arrangement.

(3) Any payments or reimbursements required to be made resulting from the matters arising pursuant to subsection (1)(g) or (h) are payable on and from the date specified in the document setting out the agreement or resolution in respect of the matters, together with interest on those amounts at the default interest rate set out in the arrangement, running from that date until the amounts are paid.

(4) The amounts of payments and reimbursements referred to in subsection (3) must be shown in a separate billing among the parties.

(5) If the Government settles a dispute with a party to an arrangement or derivative as to whether or not an extraordinary event has occurred,

- (a) subsections (1)(h) and (2) do not apply,
- (b) the Balancing Pool, if it is not a party to the settlement, is bound by the settlement as if it were a party to the settlement,
- (c) the Balancing Pool must implement the terms of the settlement that apply to it and that apply to the arrangement or derivative, and
- (d) the Minister may give directions to the Balancing Pool with respect to the settlement, and the Balancing Pool must comply with those directions.

AR 158/2003 s2;196/2016;160/2017

Dispute resolution when section 21.8 of the arrangement applies

2.1(1) In this section, “arrangement” does not include an arrangement that is held by the Balancing Pool in the capacity of buyer pursuant to the Act.

(2) If section 21.8 of an arrangement applies, then notwithstanding anything in that section or Article 19 of the arrangement

- (a) the Balancing Pool has all of the rights and obligations under Article 19 of the arrangement as if it were one of the Parties, as that term is defined in the arrangement, including the right to forward a dispute with the owner or with the buyer to binding arbitration in accordance with section 19.4 of the arrangement, and
- (b) the dispute must be resolved by the dispute resolution process as set out in Article 19 of the arrangement, as modified by subsection (3) if that subsection applies.

(3) For the purposes of clarifying how the Balancing Pool exercises the rights and performs the obligations of a Party under Article 19 of the arrangement when section 21.8 of an arrangement applies and the Balancing Pool is involved in a dispute with both the owner of the generating unit to which the arrangement applies and the buyer of that arrangement, in sections 19.3 and 19.4(d), (f), (g) and (i) of the arrangement, references to “either party” must be read as “any Party”.

AR 160/2017 s4

Derivative provisions

3(1) If the Balancing Pool creates derivatives pursuant to section 2(1)(d), the Balancing Pool may provide confidential information referred to in an arrangement to the buyer or potential buyer of the derivatives, as determined necessary by the Balancing Pool, and enter into, for a period of not less than the term of the derivatives, a confidentiality agreement in respect of that information with the buyer or potential buyer of the derivatives, that contains terms that are, in substance, as restrictive as those in section 20.1 of the arrangement.

(2) No derivative created under section 2(1)(d)

- (a) has the effect of releasing or limiting the rights, obligations and liabilities of the parties to an arrangement, or
- (b) creates any liability or obligation on an owner of a generating unit to which an arrangement applies.

(3) No buyer of a derivative has any action pursuant to the derivative against the owner of a generating unit to which the arrangement in respect of which the derivative is created applies.

(4) The exercise or performance by the buyer of a derivative of any right, entitlement, interest, term, condition or obligation forming part of or derived from an arrangement is deemed to be the exercise or performance by the Balancing Pool under the arrangement.

- (5) The buyer or potential buyer of a derivative that enters into a confidentiality agreement referred to in subsection (1) is liable to the owner of a generating unit to which an arrangement in respect of which the derivative is created applies for direct loss and damage resulting from breach of the agreement.
- (6) In subsection (5), “direct loss and damage” does not include
- (a) loss of profit,
 - (b) loss of revenue,
 - (c) loss of production,
 - (d) loss of earnings,
 - (e) loss of contract, or
 - (f) any other indirect, special or consequential loss or damage.

Record sharing

3.1(1) Subject to this section, the Balancing Pool may share records referred to in section 3(1) of the *Fair, Efficient and Open Competition Regulation* (AR 159/2009) with a person to enable that person to make offers in the Alberta electricity and ancillary services markets in respect of an arrangement that the Balancing Pool holds as a buyer.

- (2) The records referred to in subsection (1) include records with respect to the arrangement that relate to price, quantity and availability information
- (a) for the committed capacity of the arrangement with respect to offers in the Alberta electricity and ancillary services markets, or
 - (b) for any excess energy from the arrangement with respect to offers in the Alberta electricity and ancillary services markets.
- (3) Before the Balancing Pool shares the records with a person pursuant to subsection (1), the Balancing Pool shall file with the Commission and the MSA a draft order that sets out
- (a) the arrangement to which the records relate,
 - (b) the person the Balancing Pool is sharing the records with,
 - (c) the terms and conditions under which the records are being shared,

(d) the date the Balancing Pool intends to share the records, and

(e) the date that the draft order terminates.

(4) If the MSA objects to the draft order filed by the Balancing Pool under subsection (3), the MSA must file a notice of objection with the Commission and the Balancing Pool of the MSA's concerns no later than 5 days after the day the draft order is filed under subsection (3).

(5) If no notice of objection is filed by the MSA under subsection (4), the Commission shall

(a) confirm the draft order, and

(b) publish a notice of the draft order, which must include sufficient detail to allow a reasonable understanding of the nature of order.

(6) If the MSA files a notice of objection under subsection (3), the Commission

(a) shall publish a notice of the draft order, and

(b) shall hold in private a hearing or other proceeding involving only the Balancing Pool and the MSA.

(7) After holding the hearing or other proceeding, the Commission may, by order,

(a) approve the draft order,

(b) approve the draft order with any terms and conditions the Commission considers appropriate, or

(c) refuse to approve the draft order,

and shall publish a notice of the order and, in the opinion of the Commission, include sufficient detail to allow a reasonable understanding of the nature of the hearing or other proceeding and the findings of the Commission.

(8) The Balancing pool and the persons with whom the records will be shared must comply with the draft order, if confirmed under subsection (5) or approved under subsection (7)(a) or (b), as applicable.

Amounts to be paid into balancing pool accounts

4 The following amounts must be paid into the balancing pool accounts:

- (a) any payment, fee, administrative penalty, charge or other amount that is required by the Act or the regulations to be paid to the Balancing Pool;
- (b) any payment, fee, charge or other amount that is required by an arrangement to be paid to the Balancing Pool, including any payment that is required to be made as a result of the occurrence of an extraordinary event or as the result of the resolution of a dispute referred to in section 2(2);
- (c) any money borrowed for the purpose of meeting the obligations of the Balancing Pool;
- (d) any principal, income, dividend or other amount received in connection with investments made by the Balancing Pool;
- (e) any amount received by the Balancing Pool in respect of an arrangement held by the Balancing Pool as a party to the arrangement;
- (f) any amount received by the Balancing Pool in respect of a derivative, transaction or agreement referred to in section 2(1)(d);
- (g) any other amount received in the course of the administration and operation of the Balancing Pool.

Amounts to be paid out of balancing pool accounts

5(1) The following amounts must be paid out of the balancing pool accounts:

- (a) any payment, fee, administrative penalty, charge or other amount that is required by the Act or the regulations to be paid by the Balancing Pool;
- (b) any payment, fee, charge or other amount that is required by an arrangement to be paid by the Balancing Pool, including any payment that is required to be made as a result of the occurrence of an extraordinary event or as the result of the resolution of a dispute referred to in section 2(2);

- (c) any principal or interest to be paid or repaid in connection with an amount borrowed for the purpose of meeting the obligations of the Balancing Pool;
 - (d) money payable as the purchase price for investments made by the Balancing Pool;
 - (e) any amount payable by the Balancing Pool in respect of an arrangement held by the Balancing Pool as a party to the arrangement;
 - (f) any amount payable by the Balancing Pool in respect of a derivative, transaction or agreement referred to in section 2(1)(d);
 - (g) any other obligation or expenditure incurred in the course of the administration and operation of the Balancing Pool.
- (2) Nothing in the Act, the regulations or an arrangement is to be construed so as
- (a) to relieve an insurer from its obligations under a policy of insurance, or
 - (b) to require an amount otherwise recoverable under a policy of insurance to be paid by the Balancing Pool.

Annualized amount — interpretation

5.1 For the purposes of sections 5.2, 5.3 and 5.4,

- (a) “active period” means the period commencing January 1, 2018 and ending December 31, 2020;
- (b) “amortization period” means the period commencing January 1, 2021 and ending December 31, 2030;
- (c) “annualized amount” means
 - (i) in respect of the 2017 fiscal year, the negative amount of \$65 000 000;
 - (ii) in respect of each fiscal year commencing with 2018 and ending with 2030, the levelized annual amount calculated by the Balancing Pool in accordance with section 5.2(1)(a) or 5.3(1)(a).

AR 191/2016 s2

Active period calculations

5.2(1) Before the Balancing Pool prepares or amends a budget under section 82 of the Act for a fiscal year during the active period, the Balancing Pool must forecast its revenues and expenses

- (a) for the active period and calculate a levelized annual amount that, if included in the ISO tariff, would result in the amount in the balancing pool accounts totalling \$0 at the end of the amortization period, and
- (b) for that fiscal year and calculate an amount that, if included in the ISO tariff, would result in the amount in the balancing pool accounts at the end of that fiscal year not exceeding the amount of working capital and reserves included in the budget or amended budget for that fiscal year.

(2) The Balancing Pool must immediately notify the Minister if the amount calculated for a fiscal year under subsection (1)(b) differs from the levelized annual amount calculated under subsection (1)(a) by more than \$15 000 000 or differs from the annualized amount applied in the previous fiscal year by more than \$15 000 000 and may make any recommendation the Balancing Pool considers appropriate concerning the amendment of this Regulation.

AR 191/2016 s2

Amortization period calculations

5.3(1) Before the Balancing Pool prepares or amends a budget under section 82 of the Act for a fiscal year during the amortization period, the Balancing Pool must forecast its revenues and expenses

- (a) for the amortization period and calculate a levelized annual amount that, if included in the ISO tariff, would result in the amount in the balancing pool accounts totalling \$0 at the end of the amortization period, and
- (b) for that fiscal year and calculate an amount that, if included in the ISO tariff, would result in the amount in the balancing pool accounts at the end of that fiscal year not exceeding the amount of working capital and reserves included in the budget or amended budget for that fiscal year.

(2) The Balancing Pool must immediately notify the Minister if the amount calculated for a fiscal year under subsection (1)(b) differs from the levelized annual amount calculated under subsection (1)(a) by more than \$15 000 000 or differs from the annualized amount applied in the previous fiscal year by more than \$15 000 000 and may make any recommendation the Balancing

Pool considers appropriate concerning the amendment of this Regulation.

AR 191/2016 s2

Balancing Pool duties — clarification

5.4(1) The duties of the Balancing Pool set out in section 85(1) of the Act are clarified as follows:

- (a) for the purposes of the duty set out in clause (h), the Balancing Pool must ensure that by the end of the amortization period, any net amount in the balancing pool accounts that is greater than \$0 or less than \$0 is included in the ISO tariff;
- (b) for the purposes of the duty set out in clause (j), the Balancing Pool must ensure that by the end of the amortization period, no profit or loss results, after accounting for the annualized amount as a revenue or expense of the Balancing Pool.

(2) The Balancing Pool must provide to the Minister any information respecting its calculations under section 5.2 or 5.3 that the Minister requests.

AR 191/2016 s2

No change in law

6 Neither

- (a) the enactment or implementation of this Regulation, nor
- (b) the enactment or implementation of an amendment to this Regulation is to be considered a “change in law” as defined in the power purchase arrangements.

Repeal

7 The following regulations are repealed:

- (a) the *Balancing Pool Regulation* (AR 169/99);
- (b) the *Balancing Pool Allocation Regulation* (AR 330/00).

Expiry

8 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on December 31, 2030.

AR 158/2003 s8;191/2016

Coming into force

9 This Regulation comes into force on the coming into force of Parts 1 to 10 of the *Electric Utilities Act*.



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