Province of Alberta

ALBERTA UTILITIES COMMISSION ACT

ELECTRIC UTILITIES ACT

FAIR, EFFICIENT AND OPEN COMPETITION REGULATION

Alberta Regulation 159/2009

Extract

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ALBERTA REGULATION 159/2009

Alberta Utilities Commission Act
Electric Utilities Act

FAIR, EFFICIENT AND OPEN COMPETITION REGULATION

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Definitions

1(1) In this Regulation,

(a) "affiliate" means an affiliated body corporate as defined in Part 1 of the *Business Corporations Act*;

(b) "congestion" means a situation where anticipated in-merit electric energy cannot be dispatched due to a constraint affecting the interconnected electric system;

(c) "ISO" means the Independent System Operator created pursuant to the *Electric Utilities Act*;

(d) "MSA" means the Market Surveillance Administrator continued pursuant to Part 5 of the *Alberta Utilities Commission Act*;

(e) "outage records" means records that relate to the capability of

(i) a generating unit connected to the interconnected electric system to produce electric energy,

(ii) a transmission facility, including the capability of interties, as defined in the *Transmission Regulation* (AR 86/2007), to transfer electric energy,

(iii) an electric distribution system to transfer electric energy, or

(iv) a market participant to consume electric energy;

(f) "price index" includes the pool price or other price indices relating to the price of electricity, electric energy, electricity services or ancillary services in Alberta that is made available to the public;

(g) "share" means to disclose or make records available to any other person;

(h) "trade" means any financial or physical agreement, arrangement, transaction or strategy relating to the exchange, purchase or sale of electricity, electric energy, electricity services or ancillary services involving 2 or more market participants.

(2) In this Regulation, the following words and phrases have the meaning given to them by the *Electric Utilities Act*:

(a) ancillary services;

(b) Commission;

(c) conduct;

(d) customer;

(e) dispatch;

(f) electric distribution system;

(g) electric energy;

(h) electricity;

(i) electricity services;

(j) generating unit;

(k) interconnected electric system;

(l) ISO rules;

(m) market;

(n) market participant;

(o) person;

(p) pool price;

(q) power pool;

(r) record;

(s) transmission facility;

(t) transmission system.

Conduct not supporting fair, efficient and open competition

2 Conduct by a market participant that does not support the fair, efficient and openly competitive operation of the market includes the following:

(a) providing misleading records to the market or to any other person;

(b) misrepresenting the financial condition of the market participant to the market or to any other person;

(c) prearranging offsetting or wash trades that, when completed, collectively result in

(i) no material financial risk, and

(ii) no net change in beneficial ownership;

(d) misrepresenting to the market or to any other person the availability of electricity, electric energy, electricity services or ancillary services;

(e) misrepresenting the capability or operational status of a generating unit, transmission facility or electric distribution system to the market or to any other person;

(f) not offering to the power pool all electric energy from a generating unit that is capable of operating, except where

(i) the electric energy is used on property for the market participant's own use,

(ii) the electric energy has been accepted by the ISO for the provision of ancillary services, or

(iii) the *Electric Utilities Act*, its regulations or the ISO does not require the electric energy to be offered;

(g) disrupting or impairing the safety or reliability of the interconnected electric system;

(h) restricting or preventing competition, a competitive response or market entry by another person, including

(i) a market participant directly or indirectly colluding, conspiring, combining, agreeing or arranging with another market participant to restrict or prevent competition, and

(ii) a market participant engaging in predatory pricing or any other form of predatory conduct;

(i) offering electric energy from a generating unit or operating a generating unit, transmission facility or electric distribution system for the purpose of

(i) creating or increasing congestion, and

(ii) being paid to relieve that congestion;

(j) manipulating market prices, including any price index, away from a competitive market outcome;

(k) carrying out actions or transactions to circumvent any enactment, order or decision of the Commission, ISO rule or other rule applicable to a market participant.

Preferential sharing of records that are not available to the public

3(1) Subject to subsection (2), a market participant shall not share records that are not available to the public relating to any past, current or future price and quantity offer made to the power pool or for the provision of ancillary services.

(2) Records that are not available to the public referred to in subsection (1) may be shared

(a) between market participants who are affiliates of each other,

(b) between market participants 60 days after the price and quantity offer was made to the power pool or for the provision of ancillary services,

(c) by a market participant with a broker, brokerage, forward exchange or person who prepares a price index for the purpose of, or related to, trading electricity, electric energy, electricity services or ancillary services,

(d) by a market participant with the ISO or the MSA,

(e) by a market participant with another person, where required or permitted to do so by any enactment, except an ISO rule,

(f) by a market participant with another person, where required or permitted to do so by an ISO rule, but only to the extent that sharing is for the sole purpose of financial settlement,

(g) pursuant to an agreement or arrangement approved by the ISO before the coming into force of this Regulation, for a period of one year after the coming into force of this Regulation or until the expiry or termination of the agreement or arrangement, whichever is earlier, or

(h) in accordance with an order of the Commission under subsection (3).

(3) The Commission may, on application by a market participant that is otherwise prohibited from sharing records referred to under subsection (1), issue an order permitting the sharing of those records on any terms and conditions the Commission considers appropriate where the market participant establishes that

(a) the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market, including the conduct referred to in section 2, and

(b) the sharing of the records is reasonably necessary for the market participant to carry out its business.

(4) A market participant seeking an order pursuant to subsection (3) shall notify the MSA of the application at the same time as making the application to the Commission.

(5) Where the Commission receives an application under this section, the Commission shall

(a) publish notice of the application,

(b) hold in private a hearing or other proceeding involving only the market participant that filed the application and, subject to subsection (6), the MSA, and

(c) publish a notice of any order of the Commission relating to the application 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.

(6) The MSA may choose not to participate in a hearing or other proceeding referred to in subsection (5)(b).

Restrictions on trading using outage records that are not available to the public

4(1) A market participant shall not, directly or indirectly, use outage records to trade unless permitted to do so under this section.

(2) Subject to subsection (6), market participants shall provide outage records to the ISO as soon as reasonably practicable, in a form and manner and containing the content required by the ISO.

(3) The ISO shall make outage records received from market participants available to the public

(a) by category, including

(i) generating unit fuel type,

(ii) transmission facility,

(iii) electric distribution system, and

(iv) market participant capability to consume electric energy,

(b) through outage reports that include the effective date and time of the most recent outage records received from market participants in each report, and

(c) on its website, or through any other means, as soon as reasonably practicable.

(4) The ISO shall, to the extent practicable, aggregate outage records received from market participants relating to generating units and market participant capability to consume electric energy when including those records in outage reports.

(5) A market participant may use an outage record to trade after the outage record has been made available to the public by the ISO.

(6) The ISO may exempt a market participant from the requirement to provide outage records under subsection (2) where, in the ISO's opinion,

(a) the records would not reasonably be expected to have a material impact on market prices, and

(b) the records are not necessary to carry out the ISO's duties under the *Electric Utilities Act.*

(7) The ISO shall request and have regard for the views of the MSA relating to subsection (6)(a) before determining whether to exempt a market participant from the requirement to provide outage records under subsection (2).

(8) Subsections (1) and (3) do not apply to outage records that are not required to be provided to the ISO pursuant to subsection (2) or (6).

Market share offer control

5(1) In this section,

(a) "associate of a market participant" means a person associated with a market participant where

(i) one is an affiliate of the other,

(ii) one is a corporation of which the other legally or beneficially owns or controls, directly or indirectly,

(A) at least 10% of the voting shares or securities that are convertible into at least 10% of the voting shares, or

(B) an exercisable option or right to purchase at least 10% of the voting shares or securities that are convertible into at least 10% of the voting shares,

(iii) one is a partnership of which the other is a partner, including a general partner of a limited partnership,

(iv) one is a trust or estate in which the other owns or holds at least a 10% legal or beneficial interest or in respect of which the other serves as a trustee or in a similar capacity, or

(v) one is a corporation of which the other is an officer or director;

(b) "generating unit" means a generating unit as defined in the *Electric Utilities Act*, but does not include

(i) a generating unit that is not connected to the interconnected electric system, or

(ii) a generating unit that is being decommissioned and is not capable of providing electric energy to the interconnected electric system;

(c) "market participant" means a market participant as defined in the *Electric Utilities Act* and includes an associate of a market participant;

(d) "maximum capability" means the maximum quantity of megawatts that could be provided or offered from a generating unit to the power pool under optimal operating conditions, in accordance with ISO rules;

(e) "offer control" means the ultimate control and determination by a market participant of the price and quantity offers made to the power pool of all or a portion of the maximum capability of one or more generating units, which

(i) includes the maximum capability associated with each generating unit where a market participant is required by the ISO to make a price and quantity offer to the power pool, including minimum stable generation and must run volumes, and

(ii) excludes the maximum capability associated with a generating unit where a market participant is not required by the ISO to make a price and quantity offer to the power pool.

(2) The MSA shall at least annually calculate the percentage of offer control held by market participants using the following formula:

$$P = \frac{A}{B} \times 100$$

where

P is the percentage of offer control held by a market participant;

A is the sum of offer control held by a market participant;

B is the sum of maximum capability of generating units in Alberta.

(3) The MSA shall at least annually make available to the public an offer control report that

(a) shall include the names and the percentage of offer control held by market participants, where the percentage of offer control is greater than 5%, and

(b) may include the names and the percentage of offer control held by market participants, where the percentage of offer control is 5% or less.

(4) The MSA may from time to time publish an updated offer control report if, in its opinion, new records result in any material change to the offer control of a market participant or may cause a market participant to approach or exceed the percentage set out in subsection (5).

(5) Subject to subsection (6) a market participant shall not hold offer control in excess of 30% of the total maximum capability of generating units in Alberta.

(6) A market participant does not contravene subsection (5) if the Commission decides that the percentage limit established under that subsection was exceeded as a result of an unexpected decrease in the denominator of the formula referred to in subsection (2).

(7) Where the Commission makes a decision under subsection (6), the market participant shall not increase its offer control further until the Commission decides that the market participant is under the percentage limit established under subsection (5).

ISO matters

6(1) The ISO shall make available to the public the price, quantity and asset identification associated with each offer made to the power pool that is available for dispatch.

(2) The ISO shall

(a) develop information technology systems that are capable of identifying and tracking the market participant that holds the offer control associated with each price and quantity offer made to the power pool, and

(b) include that information in the reporting made available to the public under subsection (1), when the ISO's information technology systems are capable of identifying and tracking that information.

(3) The ISO shall delay making available to the public the asset identification referred to in subsection (1) and the identification of the market participant that holds the offer control referred to in subsection (2) by 60 days after they are made to the power pool.

Expiry

7 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 June 1, 2029.

Coming into force

8 This Regulation comes into force on September 1, 2009.

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