



Province of Alberta

ALBERTA UTILITIES COMMISSION ACT
ELECTRIC UTILITIES ACT

**FAIR, EFFICIENT AND OPEN
COMPETITION REGULATION**

Alberta Regulation 159/2009

With amendments up to and including Alberta Regulation 142/2019
Current as of October 30, 2019

Office Consolidation

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(Consolidated up to 142/2019)

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) an electricity 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 electricity 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;
- (a.1) to (a.4) repealed AR 142/2019 s2;
- (b) Commission;
- (c) conduct;
- (d) customer;
- (e) dispatch;
- (f) electric distribution system;
- (g) electric energy;
- (h) electricity;
- (h.1) electricity market;
- (h.2) electricity market participant;
- (i) electricity services;
- (j) generating unit;

- (k) interconnected electric system;
- (l) ISO rules;
- (m), (n) and (n.1) repealed AR 142/2019 s2;
- (o) person;
- (p) pool price;
- (q) power pool;
- (r) record;
- (r.1) settlement interval;
- (s) transmission facility;
- (t) transmission system.

AR 159/2009 s1;261/2018;142/2019

Conduct not supporting fair, efficient and open competition

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

- (a) providing misleading records to the electricity market or to any other person;
- (b) misrepresenting the financial condition of the electricity market participant to the electricity 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 electricity 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 electricity market or to any other person;
- (f) misrepresenting any information related to the electricity market participant's participation in the electricity market;

- (g) 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 electricity 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;
- (h) disrupting or impairing the safety or reliability of the interconnected electric system;
- (i) restricting or preventing competition, a competitive response or electricity market entry by another person, including
 - (i) an electricity market participant directly or indirectly colluding, conspiring, combining, agreeing or arranging with another electricity market participant to restrict or prevent competition, and
 - (ii) an electricity market participant engaging in predatory pricing or any other form of predatory conduct;
- (j) 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;
- (k) manipulating electricity market prices, including any price index, away from a competitive electricity market outcome;
- (l) carrying out actions or transactions to circumvent any enactment, order or decision of the Commission, ISO rule or other rule applicable to an electricity market participant.

AR 159/2009 s2;261/2018;142/2019

Preferential sharing of electricity market records not available to the public

3(1) Subject to subsection (2), an electricity 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 electricity market participants who are affiliates of each other,
- (b) between electricity 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 an electricity 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 an electricity market participant with the ISO or the MSA,
- (e) by an electricity market participant with another person, where required or permitted to do so by any enactment, except an ISO rule,
- (f) by an electricity 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, or
- (g) repealed AR 261/2018 s4,
- (h) in accordance with an order of the Commission under subsection (3).

(3) The Commission may, on application by an electricity 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 electricity 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 electricity market participant to carry out its business.

(4) An electricity 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 electricity 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).

AR 159/2009 s3;261/2018;142/2019

3.1 Repealed AR 142/2019 s5.

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

4(1) An electricity 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), electricity 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 electricity market participants available to the public

- (a) by category, including
 - (i) generating unit type,
 - (ii) transmission facility,
 - (iii) electric distribution system,
 - (iv) electricity market participant capability to consume electric energy, and

- (vi) outage type,
 - (b) through outage reports that include the effective date and time of the most recent outage records received from electricity 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 electricity market participants relating to generating units and electricity market participant capability to consume electric energy when including those records in outage reports.
- (5) An electricity 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 an electricity 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 electricity 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 an electricity 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).

AR 159/2009 s4;261/2018;142/2019

Market share offer control**5(1)** In this section,

- (a) "associate of an electricity market participant" means a person associated with an electricity 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;
- (a.1) “electricity market participant” means an electricity market participant as defined in the *Electric Utilities Act* and includes an associate of an electricity market participant;
 - (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) repealed AR 261/2018 s7;
 - (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 an electricity 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 an electricity 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 an electricity 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 electricity market participants using the following formula:

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

where

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

A is the sum of offer control held by an electricity 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 electricity 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 electricity 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 an electricity market participant or may cause an electricity market participant to approach or exceed the percentage set out in subsection (5).

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

(6) An electricity 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 electricity market participant shall not increase its offer control further until the Commission decides that the electricity market participant is under the percentage limit established under subsection (5).

AR 159/2009 s5;261/2018

Availability of information associated with power pool offers

6(1) Subject to this section, the ISO shall make available to the public the following information associated with each offer made to the power pool that is available for dispatch:

- (a) the price;
- (b) the quantity;
- (c) the asset identification;
- (d) the electricity market participant that holds the offer control.

(2) Repealed AR 261/2018 s6.

(3) The ISO shall not make available to the public the asset identification and the identification of the electricity market participant that holds the offer control with respect to an offer referred to in subsection (1) until 60 days after the settlement interval to which the offer applied.

AR 159/2009 s6;261/2018;142/2019

6.1 Repealed AR 142/2019 s8.

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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