



Province of Alberta

RESPONSIBLE ENERGY DEVELOPMENT ACT

ALBERTA ENERGY REGULATOR RULES OF PRACTICE

Alberta Regulation 99/2013

With amendments up to and including Alberta Regulation 45/2014

Office Consolidation

© Published by Alberta Queen's Printer

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(Consolidated up to 45/2014)

ALBERTA REGULATION 99/2013

Responsible Energy Development Act

ALBERTA ENERGY REGULATOR RULES OF PRACTICE

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Definitions

1 In these Rules,

- (a) “Act” means the *Responsible Energy Development Act*;
- (b) “applicant” means a person who files an application;
- (c) “contact information” means, in respect of a person,
 - (i) the name, address in Alberta, telephone number, e-mail address or, if the person does not have an e-mail address, the fax number of the person, and
 - (ii) if the person is represented by a representative, the name, address in Alberta, telephone number, e-mail address or, if the person does not have an e-mail address, the fax number of the person;
- (d) “document” includes any record or information in written, photographic, magnetic, electronic or other form;
- (e) “electronic hearing” means a hearing conducted by conference telephone, video conference or other electronic means where each party is able to hear and respond to the comments of the other parties at the time the comments are made;
- (f) “file” means file with the Regulator in the manner required by section 47;
- (g) “information request” means a request for information described in section 12;
- (h) repealed AR 203/2013 s2 ;
- (i) “oral hearing” means a hearing at which the parties attend in person before the Regulator;
- (i.1) “participant” means, except in Division 2 of Part 5, a person who is permitted by the Regulator under section 9 or 31.2 to participate in a hearing on an application or regulatory appeal, but does not include an applicant or a requester;
- (j) “party” means

- (i) in the case of a hearing on an application,
 - (A) an applicant, or
 - (B) a participant;
- (ii) in the case of a regulatory appeal,
 - (A) the requester,
 - (B) the approval holder,
 - (C) the decision maker of the decision appealed,
 - (D) in the case of a regulatory appeal of a decision made under the *Public Lands Act*, any person who would be entitled to participate under section 212(4) of the *Public Lands Administration Regulation* (AR 187/2011) who has elected to participate, or
 - (E) a participant.
- (k) “proceeding” means a matter brought before the Regulator
 - (i) by application,
 - (ii) by request for a regulatory appeal,
 - (iii) by the Regulator on its own initiative, or
 - (iv) at the request of the Lieutenant Governor in Council;
- (l) “publication” means a directive, bulletin or other document issued by the Regulator;
- (m) “representative” means the agent or solicitor of a party;
- (n) “requester” means a person who files a request for a regulatory appeal and whose request is not dismissed by the Regulator under section 30(7) or 31(1)(a);
- (o) repealed AR 203/2013 s2.

AR 99/2013 s1;203/2013

Application of Rules

2(1) These Rules apply to all proceedings of the Regulator, other than appeals under

- (a) the *Alberta Energy Regulator Administration Fees Rules*, or

(b) section 76 of the *Oil and Gas Conservation Act*.

(2) These Rules do not apply to Part 3 of the Act or the *Enforcement of Private Surface Agreements Rules* made under that Part.

AR 99/2013 s2;203/2013

Part 1 Applications

Form of application

(3)(1) An application must be in writing and must contain the following:

- (a) a description of the permit, licence, approval, registration, authorization, disposition, certificate, allocation, declaration or other instrument or form of approval, consent or relief applied for;
- (b) the grounds on which the application is made;
- (c) a reference to the statutory provision under which the application is made;
- (d) a clear and concise statement of the facts relevant to the application;
- (e) any other information required by the relevant statutory provision or publication;
- (f) any other information that might be useful in explaining or supporting the application;
- (g) the applicant's contact information;
- (h) evidence that the applicant has complied with all applicable notification and consultation requirements.

(2) Repealed AR 203/2013 s4.

(3) The application must be accompanied with an application fee, if an application fee is required.

(4) If an application is not complete in the opinion of the Regulator, the Regulator may

- (a) notify the applicant in writing and request the information necessary to make the application complete, or
- (b) return the application to the applicant as incomplete.

(5) Repealed AR 203/2013 s4.

AR 99/2013 s3;203/2013

Withdrawal of application

4(1) If an applicant wishes to withdraw an application before a hearing is held, the applicant shall file a notice of withdrawal of application in writing and serve a copy of the notice on the other parties.

(2) The Regulator may, with or without a hearing, authorize the withdrawal of the application on any terms that it considers appropriate.

(3) If an applicant does not take any steps with respect to an application within the time specified in these Rules or by the Regulator, the Regulator may declare the application to be withdrawn unless the applicant shows cause why the application should not be withdrawn.

Content of public notice of application

5(1) For the purpose of section 31 of the Act, public notice of an application must contain the following:

- (a) contact information of the applicant;
- (b) a description of the energy resource activity referred to in the application and the approval sought;
- (c) the legal description or GPS co-ordinates of the land on which the energy resource activity referred to in the application is or will be located, as applicable;
- (d) in the case of an application other than one referred to in section 5.2(2), the time period for filing a statement of concern with the Regulator by a person who believes that the person may be directly and adversely affected by the application;
- (e) in the case of an application referred to in section 5.2(2), a statement that a decision on the application may be made immediately or on an expedited basis, but a person who believes that the person may be directly and adversely affected by the application may nevertheless file a statement of concern with the Regulator in respect of the application;
- (f) the location where information about the energy resource activity referred to in the application may be obtained or is available to the public;

(g) any other information the Regulator considers appropriate.

(2) The Regulator may include the information described in subsection (1)(d) in a subsequent notice of application provided under section 31 of the Act.

AR 99/2013 s5;203/2013

Public notice of application

5.1 For the purpose of section 31 of the Act, public notice of an application may be provided by any of the following methods:

- (a) posting notice of the application on the Regulator's website;
- (b) publishing notice of the application in one or more issues of a newspaper that has daily or weekly circulation in the area of the Province to which the application relates;
- (c) providing notice of the application through a telecommunication system or electronic medium;
- (d) making available a copy of the application in one or more offices of the Regulator in the area of the Province to which the application relates;
- (e) delivering notice of the application to any person determined by the Regulator;
- (f) any other method the Regulator decides is appropriate.

AR 203/2013 s5

Decision on application

5.2(1) Subject to subsection (2), the Regulator shall not make a decision on an application until after the time period for filing a statement of concern specified in the public notice of the application has elapsed.

(2) Subsection (1) does not apply in respect of the following applications:

- (a) an application that is defined as routine under Directive 056: Energy Development Applications and Schedules as published by the Regulator and amended from time to time;
- (b) an application under the *Public Lands Act* that is referred to in the Alberta Government Enhanced Approval Process (EAP) Manual as published by the Department of Environment and Sustainable Resource Development and amended from time to time;

- (c) an application that in the Regulator's opinion has minimal or no adverse effect on the environment;
 - (d) an application for which in the Regulator's opinion adequate notice of the subject matter of the application has already been given;
 - (e) an application for an assignment, mortgage, transfer or lease under Part 4 of the *Public Lands Administration Regulation* (AR 187/2011);
 - (f) an application for an amendment to a licence under section 54(1)(b)(i), (ii), (v) or (vi) of the *Water Act*;
 - (g) an application for a licence or an amendment to a licence under section 108(3)(a) or (b) of the *Water Act*;
 - (h) an application for an approval or licence under the *Water Act*, if the Regulator is of the opinion that the activity or diversion of water specified in the application will result in minimal or no adverse effect on the aquatic environment or on household users, licensees and traditional agricultural users as defined in the *Water Act*;
 - (i) an application under section 32(1) of the *Water (Ministerial) Regulation* (AR 205/98) for a written authorization to suspend or decommission a dam or canal;
 - (j) an application for a registration under section 66 of the *Environmental Protection and Enhancement Act*;
 - (k) an application to extend an expiry date under section 69(2) of the *Environmental Protection and Enhancement Act*;
 - (l) an application under section 9(4) or 9.1(2) of the *Wastewater and Storm Drainage Regulation* (AR 119/93);
 - (m) an application for a temporary field authorization under section 20 of the *Public Lands Act*.
- (3)** Notwithstanding subsection (1), in the case of an application for an approval under any enactment that is required to address an emergency situation, the Regulator shall not delay any response to the emergency, including issuance of any approvals necessary to address the emergency, for the purpose of complying with the requirements in this section.

Statement of concern on application

5.3 In the case of an application other than one referred to in section 5.2(2), a person wishing to file a statement of concern under section 32 of the Act must do so

- (a) no later than 30 days from the date public notice of the application is provided, or
- (b) within a different time period set out in the notice of application.

AR 203/2013 s5

Form of statement of concern

6(1) A statement of concern filed by a person under section 32 of the Act or under section 6.1 of these Rules must be in writing and must contain the following:

- (a) a concise statement indicating
 - (i) why the person believes that the person may be directly and adversely affected by a decision of the Regulator on the application,
 - (ii) the nature of the person's objection to the application, and
 - (iii) the outcome of the application that the person advocates;
- (b) the location of the land, residence or activity of the person in relation to the location of the energy resource activity that is the subject of the application;
- (c) the person's contact information.

(2) The person making a statement of concern under subsection (1) shall file it with the Regulator in accordance with section 47.

(3) The Regulator shall on receiving a statement of concern ensure that a copy is provided to the applicant.

(4) A person may withdraw a statement of concern by filing a notice of withdrawal in writing.

AR 99/2013 s6;203/2013

Statement of concern for special matters

6.1(1) A person who believes that the person may be directly and adversely affected by one of the following circumstances may file a

statement of concern with the Regulator in accordance with these Rules:

- (a) where the Regulator proposes to make an amendment, addition or deletion to an approval under section 70 of the *Environmental Protection and Enhancement Act*;
- (b) where a contaminated site is designated under section 125 of the *Environmental Protection and Enhancement Act*;
- (c) where the Regulator proposes to make an amendment to an approval, licence or preliminary certificate under section 42, 54 or 70 of the *Water Act*;
- (d) where the Regulator intends to suspend or cancel a disposition under section 26 or 27 of the *Public Lands Act*.

(2) A statement of concern in respect of a designation of a contaminated site referred to in subsection (1)(b) must be filed no later than 30 calendar days from the day the contaminated site is designated.

(3) A statement of concern in respect of

- (a) an amendment, addition or deletion to an approval referred to in subsection (1)(a),
- (b) an amendment to an approval, licence or preliminary certificate referred to in subsection (1)(c), or
- (c) a suspension or cancellation of a disposition referred to in subsection (1)(d)

must be filed within the time period set out in the notice of the proposed or intended amendment, addition, deletion, suspension or cancellation, as the case may be.

AR 203/2013 s7

Non-consideration of statement of concern

6.2(1) The Regulator may disregard a statement of concern filed with the Regulator if in the Regulator's opinion any of the following apply:

- (a) the person who filed the statement of concern has not demonstrated that the person may be directly and adversely affected by the application or a special circumstance set out in section 6.1, as the case may be;
- (b) the statement of concern was not filed within the time specified by these Rules;

- (c) a decision was made on an application by the Regulator prior to the statement of concern being filed;
- (d) for any other reason the Regulator considers that the statement of concern is not properly before it.

(2) The Regulator may disregard a concern raised in a statement of concern filed with the Regulator if in the Regulator's opinion any of the following apply:

- (a) the concern relates to a matter outside the Regulator's jurisdiction;
- (b) the concern is unrelated to, or relates to a matter beyond the scope of the application;
- (c) the concern has been adequately dealt with or addressed through a hearing or other proceeding under any other enactment or by a decision on another application;
- (d) the concern relates to a policy decision of the Government;
- (e) the concern is frivolous, vexatious, an abuse of process or without merit;
- (f) the concern is so vague that the Regulator is not able to determine the nature of the concern.

AR 203/2013 s7

Decision regarding whether to hold a hearing

7 The Regulator may consider any of the following factors when deciding whether or not to conduct a hearing on an application:

- (a) whether any of the circumstances described in section 6.2 apply;
- (b) whether the objection raised in a statement of concern filed in respect of the application has been addressed to the satisfaction of the Regulator;
- (c) whether the applicant and any persons who have filed statements of concern in respect of the application have made efforts to resolve the issues in dispute directly with each other through a dispute resolution meeting or otherwise;
- (d) whether the application is one described in section 5.2(2);
- (e) whether the matter to which the application relates has been adequately dealt with or addressed through a hearing

- or other proceeding under any other enactment or by a decision on another application;
- (f) whether the Crown has requested that a hearing be held for the purpose of assessing impacts to and the means to mitigate the impacts on Aboriginal peoples;
 - (g) whether the application will result in minimal or no adverse effect on the environment;
 - (h) in the case of an application made under the *Water Act*, whether the application will result in minimal or no adverse effect on the aquatic environment, or household users, licensees under the *Water Act* or traditional agricultural users as defined in the *Water Act*;
 - (i) whether the matter is the subject of a cooperative proceeding under section 18 of the Act;
 - (j) any other factor the Regulator considers appropriate.

AR 99/2013 s7;203/2013

Publishing decision on application without hearing

7.1 Where the Regulator makes a decision on an application without conducting a hearing, the Regulator shall publish the decision in accordance with section 38.

AR 203/2013 s8

Notice of decision

7.2(1) In this section, “enforcement action” means

- (a) the issuance of
 - (i) an enforcement order under section 210 or 211 of the *Environmental Protection and Enhancement Act*,
 - (ii) an environmental protection order under section 113, 116, 129, 140, 141, 142, 158 or 183 of the *Environmental Protection and Enhancement Act*, or
 - (iii) an emergency environmental protection order under section 143 of the *Environmental Protection and Enhancement Act*,
- (b) the issuance of
 - (i) a water management order under section 97 of the *Water Act*, or

- (ii) an enforcement order under section 135 of the *Water Act*,
- (c) the issuance of
 - (i) an enforcement order under section 59.1 of the *Public Lands Act*, or
 - (ii) a stop order under section 59.2 of the *Public Lands Act*,
- (d) the issuance of an order under section 23(4), 182, 201(b), 204(1) or 205 of the *Public Lands Administration Regulation* (AR 187/2011),
- (e) the issuance of an order under section 20, 25, 31.6(1) or 45(2) of the *Coal Conservation Act*,
- (f) the issuance of an order under section 27, 30 and 44 of the *Oil and Gas Conservation Act*,
- (g) the issuance of an order under section 9 or 15 of the *Oil Sands Conservation Act*, or
- (h) the issuance of an order under section 23, 26 or 29 of the *Pipeline Act*.

(2) Subject to subsection (3), where the Regulator makes a decision on an application without a hearing, the Regulator shall provide notice to

- (a) the applicant,
- (b) any person who filed a statement of concern in accordance with the Rules, and
- (c) if the application is in respect of
 - (i) a reclamation certificate under section 138 of the *Environmental Protection and Enhancement Act*,
 - (A) the operator,
 - (B) the registered owner of the land to which the reclamation certificate relates, and
 - (C) any person whom the Regulator considers to be directly and adversely affected by the activity to which the reclamation certificate relates,

or

- (ii) a remediation certificate under section 117 of the *Environmental Protection and Enhancement Act*, the registered owner of the land to which the remediation certificate relates.

(3) Where the Regulator makes a decision on an application referred to in section 5.2(2), without a hearing, the Regulator shall provide notice to

- (a) the applicant, and
- (b) to any other person the Regulator considers appropriate.

(4) Where the Regulator takes an enforcement action, the Regulator shall provide notice to

- (a) the person to whom the enforcement action is directed, and
- (b) if the enforcement action is
 - (i) an environmental protection order regarding conservation and reclamation or a reclamation certificate under the *Environmental Protection and Enhancement Act*,
 - (A) the operator,
 - (B) the owner of the land concerned, and
 - (C) any person the Regulator considers to be directly and adversely affected by the activity to which the reclamation certificate relates,

or

- (ii) an environmental protection order issued under section 129 of the *Environmental Protection and Enhancement Act*,
 - (A) the person to whom the environmental protection order is directed, and
 - (B) the local authority of the municipality in which the contaminated site is located.

(5) Where the Regulator issues an administrative penalty under a specified enactment or the Act, the Regulator shall provide notice to the person required to pay the penalty.

(6) Where the Regulator, on its own initiative, makes an amendment, deletion or addition to a term or condition of

- (a) an approval, the Regulator shall provide notice to
 - (i) the approval holder,
 - (ii) any person who filed a statement of concern under section 6.1, and
 - (iii) if the approval is
 - (A) a reclamation certificate issued under section 138 of the *Environmental Protection and Enhancement Act*, the same persons to whom notice was given under subsection (2)(c), or
 - (B) a remediation certificate issued under section 117 of the *Environmental Protection and Enhancement Act*, the registered owner of the land to which the remediation certificate relates,

and

- (b) an enforcement action, the Regulator shall provide notice to
 - (i) the same persons to whom notice was given under subsection (3), and
 - (ii) any other person whose name was added to the enforcement action order.

(7) Where the Regulator suspends or cancels an approval, the Regulator shall provide notice to

- (a) the approval holder, and
- (b) if the approval is
 - (i) a reclamation certificate issued under section 138 of the *Environmental Protection and Enhancement Act*, the persons to whom notice was given under subsection (2)(c), or
 - (ii) a remediation certificate issued under section 117 of the *Environmental Protection and Enhancement Act*, the registered owner of the land to which the remediation certificate relates.

(8) Where the Regulator designates a contaminated site under section 125 of the *Environmental Protection and Enhancement Act*, the Regulator shall provide notice to

- (a) the owner of the contaminated site,

- (b) any other person responsible for the contaminated site that the Regulator considers appropriate,
- (c) the local authority of the municipality in which the contaminated site is located, and
- (d) any person who, in the opinion of the Regulator, is directly and adversely affected by the designation.

(9) Where the Regulator makes an order under section 24(1) of the *Conservation and Reclamation Regulation* (AR 115/93), the Regulator shall provide notice to the operator.

(10) Where the Regulator makes an order under section 33(1) of the *Waste Control Regulation* (AR 192/96), the Regulator shall provide notice to the approval holder and the registration holder.

(11) Where the Regulator makes a decision in respect of a renewal of a licence under section 60 of the *Water Act*, the Regulator shall provide notice to

- (a) the licensee, in the case of a refusal to renew, and
- (b) any person who filed a statement of concern, in the case where a licence has been renewed and there has been a public review.

(12) Where the Minister makes an order under section 34(2) of the *Water Act*, the Regulator shall provide notice to the applicant and to any other person the Regulator considers appropriate.

(13) Where the Regulator makes a decision in respect of a matter under section 47(1) of the *Public Lands Act*, the Regulator shall provide notice to the person deemed to be a trespasser.

(14) Where the Regulator makes a decision in respect of a matter under section 25(1) where no application has been submitted for a disposition, 43(1), 62(1), 69(2)(f)(iii) or 77 of the *Public Lands Act*, the Regulator shall provide notice to the approval holder.

(15) Where the Regulator makes a decision in respect of a matter under section 22(1), 23(2) where there has been no application, 27, 96(1) or 150 of the *Public Lands Administration Regulation* (AR 187/2011), the Regulator shall provide notice to the approval holder.

(16) Where the Regulator makes a decision in respect of a matter under section 20(3)(b) or (c) of the *Public Lands Administration Regulation* (AR 187/2011) and there has been no application made for a formal disposition, the Regulator shall provide notice to the holder of the expired disposition.

(17) Where the Regulator makes a decision in respect of a matter under section 20(3)(d) of the *Public Lands Administration Regulation* (AR 187/2011), the Regulator shall provide notice to the holder of the expired disposition.

(18) Where the Regulator makes a decision in respect of a matter under section 4(5) of the *Public Lands Administration Regulation* (AR 187/2011), the Regulator shall provide notice to the holder of the agreement.

(19) Where the Regulator makes a decision in respect of a matter under section 194(2) of the *Public Lands Administration Regulation* (AR 187/2011), the Regulator shall provide notice to the owner of the pet animal.

(20) In addition to providing notice to the persons specified in this section, the Regulator may also provide notice to any other person whom the Regulator considers appropriate.

AR 203/2013 s8

Notice of proposed action

7.3(1) Where the Regulator, on the Regulator's own initiative, proposes to make an amendment, deletion or addition to an approval, the Regulator shall provide notice to

- (a) the approval holder, and
- (b) in respect of a proposed action under an energy resource enactment, the *Environmental Protection and Enhancement Act*, the *Public Lands Act* or the *Water Act*, any other person whom the Regulator considers appropriate.

(2) Where the Regulator intends to suspend or cancel a disposition under section 26 of the *Public Lands Act*, the Regulator shall provide notice to

- (a) the approval holder, and
- (b) any other person whom the Regulator considers appropriate.

(3) Notice provided under subsection (2) in respect of an intention to cancel a disposition must state

- (a) the Regulator's intention to cancel the disposition after the 30th day following the date of the notice, and
- (b) the reason for the cancellation.

AR 203/2013 s8

Notice of refusing to accept an application

7.4(1) Where the Regulator refuses to accept an application for a reclamation certificate under section 138(1.1) of the *Environmental Protection and Enhancement Act*, the Regulator shall provide notice to the operator.

(2) Where the Regulator refuses to accept an application for a remediation certificate under section 117(3.1) of *Environmental Protection and Enhancement Act*, the Regulator shall provide notice to the applicant and the registered owner of the land.

(3) Where the Regulator rejects an application under section 9(7), 11(6) or 13(6) of the *Public Lands Administration Regulation* (AR 187/2011), the Regulator shall provide notice to the applicant.

AR 203/2013 s8

Manner of providing notice of decision or action

7.5 For the purpose of providing notice of a decision or action taken under sections 7.2, 7.3 and 7.4, the Regulator shall do one or more of the following:

- (a) post notice of the decision or action on the Regulator's website;
- (b) publish notice of the decision or action in one or more issues of a newspaper that has daily or weekly circulation in the area of the Province to which the decision relates;
- (c) provide notice of the decision or action through a telecommunication system or electronic medium;
- (d) make available a copy of the decision or action in one or more offices of the Regulator in the area of the Province to which the decision relates;
- (e) deliver notice of the decision or action to the specified persons;
- (f) provide notice of the decision or action in any other manner the Regulator decides is appropriate.

AR 203/2013 s8

Part 1.1 Alternative Dispute Resolution Meeting

Dispute resolution meeting

7.6(1) The Regulator may, on its own initiative or on request, convene a dispute resolution meeting or direct a person to attend

a dispute resolution meeting for the purposes of resolving any issue or matter in dispute before the Regulator.

(2) Subject to subsection (3), the Regulator may determine who may participate or who is required to participate in a dispute resolution meeting.

(3) In the case of a dispute resolution meeting convened with respect to a regulatory appeal, only the following persons may participate:

- (a) the approval holder;
- (b) the requester;
- (c) the decision maker;
- (d) in the case where the regulatory appeal is in respect of a matter under the *Public Lands Act*, any person who would otherwise be entitled to participate under section 212(4) of the *Public Lands Administration Regulation* (AR 187/2011) who has elected to participate.

(4) The Regulator may define the nature and scope of a dispute resolution meeting before the meeting commences.

(5) A dispute resolution meeting may be in the nature of one of the following:

- (a) facilitation by staff of the Regulator;
- (b) mediation by staff of the Regulator;
- (c) mediation by a hearing commissioner;
- (d) binding alternative dispute resolution by a hearing commissioner;
- (e) any other form of dispute resolution that the Regulator considers appropriate in the circumstances.

(6) Where the Regulator requires a person to attend a dispute resolution meeting, and the person fails to attend, the Regulator may proceed with the dispute resolution meeting in the absence of that person.

AR 203/2013 s9

Confidentiality

7.7(1) A dispute resolution meeting may not be recorded, transcribed or form part of the record of a hearing or other proceeding.

(2) All persons attending a dispute resolution meeting shall treat admissions, concessions, offers to settle and related discussions as confidential and without prejudice.

(3) Admissions, concessions, offers to settle and related discussions in a dispute resolution meeting are not admissible in a hearing or other proceeding without the consent of all persons participating in the dispute resolution meeting.

AR 203/2013 s9

Agreement

7.8 Notwithstanding section 7.7, where an agreement is signed by the parties to a dispute resolution meeting, the terms of that agreement related to matters within the authority of the Regulator may be incorporated in and form part of the decision of the Regulator only where a person with authority to make a decision on behalf of the Regulator has attended the dispute resolution meeting and finds the terms acceptable.

AR 203/2013 s9

Dispute resolution meetings conducted by hearing commissioner

7.81 If a dispute resolution meeting is convened, it shall be conducted by a hearing commissioner where

- (a) a notice of hearing has been issued for an application and no other dispute resolution meeting is being held in respect of the same matter, or
- (b) a request for regulatory appeal has been filed in respect of an appealable decision and has not been dismissed.

AR 203/2013 s9;45/2014

Agreement as to process on hearing

7.82 If the issues or matters for which a dispute resolution meeting was convened are not resolved, the parties may agree to

- (a) a date for a future meeting,
- (b) an agreed statement of facts,
- (c) matters related to evidence,
- (d) matters to be included in the hearing, and
- (e) any matter of procedure.

AR 203/2013 s9

Binding dispute resolution

7.9(1) The parties to a hearing on an application or a regulatory appeal may agree to a final resolution of the application or the regulatory appeal by way of binding dispute resolution conducted by a hearing commissioner instead of by a hearing, and in doing so agree that the decision made by a hearing commissioner is not subject to regulatory appeal.

(2) The Regulator shall provide a copy of a decision referred to in subsection (1) to each party.

AR 203/2013 s9

Part 2 Hearings on Applications

Notice of hearing

8(1) If the Regulator sets an application down for a hearing,

- (a) the chief hearing commissioner shall establish a panel of one or more hearing commissioners to conduct the hearing, and
- (b) the Regulator shall issue a notice of hearing.

(2) A notice of hearing must

- (a) be in writing,
- (b) briefly describe the subject-matter of the hearing,
- (c) in the case of an oral or electronic hearing,
 - (i) indicate the date, time and place of the hearing, which must not be less than 10 days after the date of the notice, or
 - (ii) because of the complexity of the subject-matter of the proceeding, indicate that the date, time and place of the hearing will be set after the filing of submissions by any party,
- (d) indicate that copies of the application and other documents filed in support of the application
 - (i) may be obtained from the applicant or the applicant's representative, and
 - (ii) are available for viewing at a location open to the public,

- (e) indicate the name and address in Alberta of the applicant or the applicant's representative where the application and other documents filed in support of the application may be obtained,
 - (f) indicate the address of the location open to the public where the application and other documents are available for viewing and the hours during which they may be viewed, and
 - (g) contain any other information and procedural requirements that the Regulator considers necessary.
- (3) A notice of hearing may contain a schedule showing the time limits for filing and serving requests to participate, requests for advance of funds, submissions, responses and replies, information requests, documentary evidence and written argument.
- (4) The Regulator may issue an amended notice of hearing.

AR 99/2013 s8;203/2013

Request to participate

- 9(1)** A person who wishes to participate in a hearing on an application shall file with the Regulator a request to participate and serve a copy on the applicant within the time set out in the notice of hearing.
- (2) A request to participate must be in writing and must contain
- (a) a copy of the person's statement of concern or an explanation as to why the person did not file a statement of concern,
 - (b) a concise statement indicating
 - (i) why and how the person may be directly and adversely affected by a decision of the Regulator on the application, or
 - (ii) if the person will not be directly and adversely affected by a decision of the Regulator on the application, what the nature of the person's interest in the matter is and why the person should be permitted to participate,
 - (c) if the person will not be directly and adversely affected by a decision of the Regulator on the application, an explanation of how

- (i) the person's participation will materially assist the Regulator in deciding the matter that is the subject of the hearing,
 - (ii) the person has a tangible interest in the subject-matter of the hearing,
 - (iii) the person's participation will not unnecessarily delay the hearing, and
 - (iv) the person will not repeat or duplicate evidence presented by other parties,
- (d) the outcome of the application that the person advocates,
 - (e) the nature and scope of the person's intended participation,
 - (f) the person's contact information,
 - (g) if the person is acting on behalf of a group or association of persons, the nature of the person's membership in the group or association, and
 - (h) the person's efforts, if any, to resolve issues associated with the proceeding directly with the applicant.
- (3)** The Regulator may refuse to allow a person to participate in the hearing on an application if the Regulator is of the opinion that any of the following circumstances apply:
- (a) the person's request to participate is frivolous, vexatious, an abuse of process or without merit;
 - (b) the person has not demonstrated that the decision of the Regulator on the application may directly and adversely affect the person;
 - (c) in the case of a group or association, the request to participate does not demonstrate to the satisfaction of the Regulator that a majority of the persons in the group or association may be directly and adversely affected by the decision of the Regulator on the application;
 - (d) the person has not demonstrated that
 - (i) the person's participation will materially assist the Regulator in deciding the matter that is the subject of the hearing,
 - (ii) the person has a tangible interest in the subject-matter of the hearing,

- (iii) the person's participation will not unnecessarily delay the hearing, and
- (iv) the person will not repeat or duplicate evidence presented by other parties;
- (e) the Regulator considers it appropriate to do so for any other reason.

AR 99/2013 s9;203/2013

Nature and scope of participation

9.1(1) If the Regulator permits a person who has submitted a request to participate in a hearing, the Regulator shall specify the nature and scope of the person's permitted participation, including

- (a) whether the participant may make representations orally or by means of written submission only,
- (b) whether the participant may question witnesses,
- (c) specifying the issues for which the participant is allowed to make submissions, representations and argument, and
- (d) otherwise defining the nature of the participant's involvement at a hearing.

(2) The applicant shall provide the participant with copies of any of the following documents and material that the applicant has not previously provided the participant:

- (a) the application and any other documents filed in support of the application;
- (b) any material filed as documentary evidence.

AR 203/2013 s11

Submission on merits

9.2(1) All parties participating in a hearing shall file a submission and serve a copy of it on the other parties within the time limits set out in the notice of hearing.

(2) A submission must be in writing and must state the following:

- (a) the outcome of the application that the person advocates;
- (b) the facts the person proposes to show in evidence, the nature and extent of testimony and any expert reports and evidence;

- (c) a list of witnesses the person intends to present to speak to the evidence referred to in clause (b);
 - (d) the reasons why the person believes the Regulator should decide in the manner that the person advocates;
 - (e) anything else that the Regulator directs the parties to address in a submission.
- (3) The Regulator may
- (a) direct a party to provide additional information to the Regulator, or
 - (b) direct a party to make further submissions, either orally or in writing, on the original submission.
- (4) Where the Regulator determines that a matter or issue will not be included in the hearing of an application, no representations may be made on that matter or issue in the submissions or at the hearing.

AR 203/2013 s11

Question of constitutional law

10 In addition to giving notice in accordance with section 12 of the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation* (AR 69/2006), a person who intends to raise a question of constitutional law before the Regulator shall include in its submission to the Regulator, filed in accordance with these Rules and any additional direction of the Regulator,

- (a) the constitutional question the person intends to raise,
- (b) the legal argument the person intends to make, and
- (c) the evidence the person intends to rely on in support of the person's legal argument.

11 Repealed AR 203/2013 s12.

Information request

12(1) If a notice of hearing contains a schedule referred to in section 8(3), or the Regulator has otherwise set out in writing a process for the filing and serving of information requests, a party may request another party, within the time limit set out by the Regulator, to provide information necessary

- (a) to clarify any documentary evidence filed by the other party,
- (b) to simplify the issues,
- (c) to permit a full and satisfactory understanding of the matters to be considered, or
- (d) to expedite the proceeding.

(2) An information request under subsection (1) must

- (a) be in writing,
- (b) be directed to the party from whom a response is sought,
- (c) contain specific questions for clarification about the party's evidence, documents or other material that is in the possession of the party and relevant to the proceeding,
- (d) be filed and served as directed by the Regulator, and
- (e) set out the date on which the information request is filed.

Response to information request

13(1) A party who is served with an information request under section 12 shall prepare a response that

- (a) repeats each question in the information request,
- (b) provides a full and adequate response to each question, and
- (c) identifies the individual or individuals who were responsible for preparing the response.

(2) A response under subsection (1) must

- (a) be in writing,
- (b) be filed and served as directed by the Regulator, and
- (c) set out the date on which the response is filed.

Partial or no response

14(1) A party who is served with an information request under section 12 who is not able or not willing to prepare a response in accordance with section 13 shall do one of the following:

- (a) if the party contends that the information request is not relevant, file and serve on the party making the request a response in writing that sets out the specific reasons in support of that contention;
 - (b) if the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, file and serve on the party making the request a response in writing that
 - (i) sets out the specific reasons in support of that contention, and
 - (ii) contains any other information that the party considers would be of assistance to the party making the information request;
 - (c) if the party contends that the information requested is confidential, file and serve on the party making the request a response in writing that sets out the specific reasons why the information is confidential and any harm that might be caused if it were disclosed.
- (2) If a party is not satisfied with a response under subsection (1), the party may file a motion under section 44 requesting that the matter be settled by the Regulator.

Prehearing meeting

15 The Regulator may, on its own initiative or at the request of a party, direct that a pre-hearing meeting be held with the parties for one or more of the following purposes:

- (a) to determine the issues in question and the position of the parties, including matters relating to costs;
- (b) to recommend the procedures to be adopted with respect to the hearing;
- (c) to determine whether the parties may benefit from alternative dispute resolution or a technical meeting;
- (d) if an oral hearing or electronic hearing is to be held, to set the date, time and place for the oral hearing or electronic hearing and to fix the time to be allotted to each party to present evidence and argument;
- (e) to decide any other matter that may aid in the simplification or the fair and most expeditious disposition of the proceeding.

16 Repealed AR 203/2013 s13.

Technical meeting

17 The Regulator may direct the parties to a hearing or other proceeding to participate in a technical meeting for the purpose of

- (a) reviewing and clarifying an application, a statement of concern, a submission, a response to a submission, a reply to a response to a submission, an information request or a response to an information request, or
- (b) recommending procedures to be adopted with respect to the hearing.

Nature of hearing

18 The Regulator may conduct a hearing in writing, electronically or orally, or by any combination of those methods.

AR 99/2013 s18;203/2013

Written hearings

19(1) Where the Regulator holds a written hearing, it may

- (a) dispose of the proceeding on the basis of the documents filed by the parties, or
- (b) require additional information and material from the parties before disposing of the proceeding.

(2) Repealed AR 203/2013 s15.

AR 99/2013 s19;203/2013

Time limits

19.1 In the case of an electronic or oral hearing, the Regulator shall establish time limits for

- (a) presentation of evidence,
- (b) questioning of witnesses,
- (c) argument, and
- (d) any other procedural items.

AR 203/2013 s16

Notice to attend

20(1) The Regulator may, on its own initiative or at the request of a party, issue a notice to attend requiring a person to attend an oral

hearing or electronic hearing as a witness and to produce the documents and material set out in the notice.

(2) A notice to attend must be served by the party who requests the notice, or by the Regulator if the notice is issued on the Regulator's own initiative.

(3) The provisions of the *Alberta Rules of Court* (AR 124/2010) relating to the payment of allowances to witnesses apply to oral hearings and electronic hearings.

(4) Notwithstanding subsection (3), the Regulator may increase the amount payable to an expert witness or in special circumstances where a witness attends an oral hearing or an electronic hearing as a result of a notice to attend.

Oath or affirmation

21 Unless the Regulator otherwise directs, a witness at an oral hearing or electronic hearing must be examined orally on oath or affirmation.

Expert witnesses

22 The Regulator may require expert witnesses from different parties to confer with each other in advance of the hearing for the purposes of narrowing issues, identifying points on which their views differ or agree and preparing joint written statements to be admissible as evidence at the hearing.

Witness panels

23(1) The Regulator may permit or require evidence to be given by some or all of the witnesses sitting as one or more witness panels at any time the Regulator may determine.

(2) Questions addressed to a witness panel may be directed to specific members of the witness panel or the witness panel in general.

(3) Unless the Regulator otherwise directs, members of a witness panel may confer among themselves.

(4) Witnesses shall give their views and may be directed to comment on the views of other witness panel members and to make concluding statements.

(5) Where a question is directed to a specific member of a witness panel and that member is not able to answer the question because of a lack of knowledge or qualifications, the Regulator may permit another member of the witness panel to answer the question.

(6) With leave of the Regulator, witnesses may pose questions to other witness panel members.

(7) On completion of the testimony of the witness panel, the witness panel members may be cross-examined and re-examined in the sequence directed by the Regulator.

Presenting evidence

24(1) Unless the Regulator otherwise directs, no documentary evidence may be presented at an oral hearing or electronic hearing unless the evidence was filed and served in accordance with section 53.

(2) A witness presenting documentary evidence at an oral hearing or electronic hearing shall

(a) confirm on oath or affirmation that the documentary evidence

(i) was prepared by the witness or under the witness's direction or control, and

(ii) is accurate to the best of the witness's knowledge or belief,

and

(b) unless the Regulator otherwise directs, confine the witness's testimony to matters set out in the documentary evidence or arising from evidence adduced in cross-examination.

(3) Unless the Regulator otherwise directs, a witness may be

(a) cross-examined by or on behalf of a party, or

(b) examined by the Regulator or a member of the Regulator staff.

(4) During a recess of an oral hearing or electronic hearing, a witness who is under cross-examination may consult with the witness's counsel if that is necessary to respond to undertakings made before the Regulator.

(5) No argument may be made by a party unless it is based on the evidence before the Regulator.

Hearings in absence of the public

25(1) Subject to subsections (2) and (3), all oral hearings and electronic hearings are open to the public.

(2) If the Regulator considers it necessary to prevent the disclosure of sensitive personal, financial or commercial matters or other matters because, in the circumstances, the need to protect the confidentiality of those matters outweighs the desirability of an open hearing, the Regulator shall conduct all or part of the hearing in private.

(3) If all or any part of an oral hearing or electronic hearing is to be held in private, no party may attend the hearing unless the party files an undertaking stating that the party will hold in confidence any evidence heard in private.

Submissions by Regulator staff

26 If, in the opinion of the Regulator, it is necessary or appropriate in the circumstances for a member of the Regulator staff or an expert hired by the Regulator to participate in a hearing, the member of the Regulator staff or the hired expert, as the case may be, may, in accordance with these Rules, do one or more of the following:

- (a) file a submission;
- (b) present evidence;
- (c) cross-examine witnesses;
- (d) submit argument;
- (e) be cross-examined by or on behalf of a party;
- (f) be examined by the Regulator or another member of the Regulator staff.

Arguments

27 Arguments must be in a form as directed by the Regulator.

Decision on hearing

28 The Regulator shall, within 90 days from the date of the conclusion of a hearing,

- (a) make a written decision on the matter, and
- (b) publish the decision in accordance with section 38.

Part 3 Regulatory Appeal

29 Repealed AR 203/2013 s17.

Form of request for regulatory appeal

30(1) A request for a regulatory appeal must be in writing and must contain the following:

- (a) a copy of the appealable decision;
- (b) an explanation as to why the person should be considered an eligible person under section 36 of the Act;
- (c) the legal description or GPS co-ordinates of
 - (i) the land or residence of the requester, and
 - (ii) the location on which the energy resource activity that is the subject of the appealable decision and the request is or will be located;
- (d) a clear and concise statement of the facts relevant to the regulatory appeal;
- (e) the grounds on which the request for regulatory appeal is made;
- (f) the relief requested;
- (g) the requester's contact information.

(2) In the case of a request for regulatory appeal of an appealable decision on an application, the request must also include a copy of the statement of concern filed by the requester, or an explanation as to why the requester did not file a statement of concern.

(3) A request for regulatory appeal must be filed with the Regulator in accordance with section 47 within the following time periods:

- (a) in the case of a regulatory appeal in respect of an enforcement order issued under section 210(1)(a), (b) or (c) or an environmental protection order issued under section 129, 140 or 141 of the *Environmental Protection and Enhancement Act*, no later than 7 calendar days after notice of the order was issued;
- (b) in the case of a regulatory appeal in respect of a water management order issued under section 97 or an

- enforcement order issued under section 135 of the *Water Act*, no later than 7 calendar days after notice of the order is issued;
- (c) in the case of a regulatory appeal in respect of an enforcement order issued under section 59.1 of the *Public Lands Act*, no later than 7 calendar days after notice of the order is issued;
 - (d) in the case of a regulatory appeal in respect of an approval issued under section 38 of the *Water Act*, no later than 7 calendar days after notice of the order is issued;
 - (e) in the case of a regulatory appeal in respect of the removal of a thing under section 69(2)(f)(iii) of the *Public Lands Act*, no later than 3 hours after the thing is removed;
 - (f) in the case of a regulatory appeal in respect of a stop order issued under section 59.2 of the *Public Lands Act*, no later than 3 hours after the order is issued;
 - (g) in the case of a regulatory appeal in respect of an order issued under section 23(4), 182, 201(b), 204(1) or 205 of the *Public Lands Administration Regulation* (AR 187/2011), no later than 7 calendar days after notice of the order is issued;
 - (h) in the case of a regulatory appeal in respect a reclamation certificate issued under section 138 of the *Environmental Protection and Enhancement Act*, no later than one year after the reclamation certificate is issued;
 - (i) in the case of a regulatory appeal in respect of an order issued under section 20, 25, 31.6(1) or 45(2) of the *Coal Conservation Act*, no later than 7 calendar days after the notice of order is issued;
 - (j) in the case of a regulatory appeal in respect of an order issued under section 27, 30 or 44 of the *Oil and Gas Conservation Act*, no later than 7 calendar days after the notice of order is issued;
 - (k) in the case of a regulatory appeal in respect of an order issued under section 9 of the *Oil Sands Conservation Act*, or under section 15 of the *Oil Sands Conservation Act* if the order was made without a hearing, no later than 7 calendar days after notice of the order is issued;
 - (l) in the case of a regulatory appeal in respect of an order issued under section 23, 26 or 29 of the *Pipeline Act*, no

later than 7 calendar days after notice of the order is issued;

- (m) in the case of a regulatory appeal in respect of any other appealable decision, no later than 30 calendar days after notice of the decision is issued.

(4) A request for regulatory appeal must be accompanied with a request fee, if a request fee is required.

(5) A person who files a request for regulatory appeal shall serve a copy of the request for regulatory appeal on

- (a) the registered owner of the land on which the energy resource activity that is the subject of the request for regulatory appeal is or will be located,
- (b) the approval holder, and
- (c) any other person that the Regulator requires.

(6) If a request for regulatory appeal is not complete in the opinion of the Regulator, the Regulator may notify the person who filed the request for regulatory appeal in writing and request the information necessary to make the request for regulatory appeal complete.

(7) If the person who files a request for regulatory appeal does not supply the information in order to make the request for regulatory appeal complete within the time period specified, the Regulator may dismiss the request.

AR 99/2013 s30;203/2013

Dismissal of or hearing on a regulatory appeal

31(1) The Regulator may

- (a) dismiss the request for a regulatory appeal pursuant to section 39(4) of the Act, or
- (b) dismiss part of the request for regulatory appeal pursuant to section 39(4) of the Act and proceed on the other part.

(2) If the Regulator sets a regulatory appeal down for hearing, the Regulator shall identify the matters or issues to be considered in the regulatory appeal.

(3) The regulatory appeal shall not include any matters already adequately dealt with through another hearing, regulatory appeal or review under any enactment.

(4) Where the Regulator determines that a matter will not be included in the hearing of a regulatory appeal, no representations may be made on that matter in the submissions or at the hearing.

AR 99/2013 s31;203/2013

Additional information

31.1 The Regulator may allow new information to be submitted in a regulatory appeal if the information is relevant and material to the decision appealed from and was not available to the person who made the decision at the time the decision was made.

AR 203/2013 s19

Notice of hearing in respect of regulatory appeal

32(1) If the Regulator sets a regulatory appeal down for a hearing,

- (a) the chief hearing commissioner shall establish a panel of one or more hearing commissioners to conduct a hearing in respect of the regulatory appeal, and
- (b) the Regulator shall issue a notice of hearing on regulatory appeal.

(2) Part 2 applies to a hearing in respect of a regulatory appeal.

(3) A notice of hearing in respect of a regulatory appeal must contain the same information as is contained in a notice of hearing under Part 2, and a reference to a notice of hearing in Part 2 or Part 5 shall be read as including a reference to the notice of hearing on regulatory appeal.

Request to participate

32.1(1) A person who wishes to participate in a hearing on a regulatory appeal shall file a request to participate with the Regulator and serve a copy on the parties within the time set out in the notice of hearing.

(2) A request to participate must be in writing and must contain

- (a) a copy of the person's statement of concern, if applicable,
- (b) a concise statement indicating
 - (i) why the person may be directly and adversely affected by a decision of the Regulator on the regulatory appeal, or
 - (ii) if the person will not be directly and adversely affected by a decision of the Regulator on the

regulatory appeal, what the nature of the person's interest in the matter is and why the person should be permitted to participate,

- (c) if the person will not be directly and adversely affected by the decision of the Regulator on the regulatory appeal, an explanation of how
 - (i) the person's participation will materially assist the Regulator in deciding the matter that is the subject of the regulatory appeal,
 - (ii) the person has a tangible interest in the subject-matter of the regulatory appeal,
 - (iii) the person's participation will not unnecessarily delay the regulatory appeal, and
 - (iv) the person will not repeat or duplicate evidence presented by other parties,
- (d) the outcome of the regulatory appeal that the person advocates,
- (e) the nature and scope of the person's intended participation,
- (f) the person's contact information,
- (g) if the person is acting on behalf of a group or association of persons, the nature of the person's membership in the group or association, and
- (h) the person's efforts, if any, to resolve issues associated with the proceeding directly with the requester or the approval holder, as the case may be.

(3) The Regulator may refuse to allow a person to participate in a hearing on a regulatory appeal if the Regulator is of the opinion that any of the following circumstances apply:

- (a) the person's request to participate is frivolous, vexatious, an abuse of process or without merit;
- (b) the person has not demonstrated that the decision of the Regulator in the proceeding may directly and adversely affect the person;
- (c) in the case of a group or association, the request to participate does not demonstrate to the satisfaction of the Regulator that a majority of the persons in the group or

association may be directly and adversely affected by the decision of the Regulator;

- (d) the person has not demonstrated that
 - (i) the person's participation will materially assist the Regulator in deciding the matter that is the subject of the regulatory appeal,
 - (ii) the person has a tangible interest in the subject-matter of the regulatory appeal,
 - (iii) the person's participation will not unnecessarily delay the regulatory appeal, and
 - (iv) the person will not repeat or duplicate evidence presented by other parties;
- (e) any other reason the Regulator considers appropriate.

AR 203/2013 s20

Nature and scope of participation

32.2 The Regulator shall specify the nature and scope of each party's participation in a hearing on a regulatory appeal, including

- (a) whether the party may make representations orally or by means of written submission only,
- (b) whether the party may question witnesses,
- (c) specifying the issues for which a party is allowed to make submissions, representations and argument, and
- (d) otherwise defining the nature of a party's involvement at a regulatory appeal.

AR 203/2013 s20

Order of presentation

32.3(1) The order of presentation at a hearing on a regulatory appeal shall be

- (a) the requester,
- (b) the approval holder, and
- (c) the decision maker.

(2) The Regulator may determine where any other parties fit in the order set out in subsection (1).

AR 203/2013 s20

Discontinuation of regulatory appeal

32.4 The Regulator shall discontinue a regulatory appeal if the requester withdraws its request for regulatory appeal.

AR 203/2013 s20

Decision on regulatory appeal

33 The Regulator shall, within 90 days from the conclusion of the hearing,

- (a) make a written decision on the matter, and
- (b) publish the decision, with reasons, in accordance with section 38.

**Part 4
Reconsideration**

Notice of hearing in respect of reconsideration

34(1) If the Regulator sets a reconsideration down for a hearing,

- (a) the chief hearing commissioner shall establish a panel of one or more hearing commissioners to conduct a hearing in respect of the reconsideration, and
- (b) the Regulator shall issue a notice of hearing in respect of the reconsideration.

(2) Part 2 applies to a hearing in respect of a reconsideration.

(3) A notice of reconsideration under subsection (1) must contain the same information as is contained in a notice of hearing under Part 2, and a reference to a notice of hearing in Part 2 or Part 5 shall be read as including a reference to the notice of hearing on reconsideration.

Crown request for reconsideration

34.1 In exercising its discretion under section 42 of the Act, the Regulator shall consider whether the Crown has requested that a reconsideration be conducted for the purpose of addressing the impacts, and the means to mitigate the impacts, to Aboriginal peoples.

AR 203/2013 s21

Decision on reconsideration

35 The Regulator shall, within 90 days from the date of the conclusion of the hearing,

- (a) make a written decision on the matter, and
- (b) publish the decision, with reasons, in accordance with section 38.

Part 5 General Matters and Costs

Division 1 General Matters

Definition

36 In this Part, “applicant” includes a requester.

Panel of hearing commissioners

37(1) Where a panel of hearing commissioners consists of more than one person, a majority of the panel constitutes a quorum.

(2) No hearing commissioner who has an interest in the subject matter of a hearing or other proceeding, whether directly or because of the hearing commissioner’s position, affiliation or involvement in or with an organization, firm or business, shall participate in the panel of hearing commissioners that will conduct the hearing or other proceeding.

(3) When a hearing or other proceeding is conducted by a panel of hearing commissioners and a member or members of that panel for any reason do not attend on any day or part of a day, the other member or members who are sitting at the hearing or other proceeding may, if they constitute a quorum, continue the hearing or other proceeding as fully and effectively as though the absent member or members were present.

Notice of hearings, publication of decisions

38 For the purposes of

- (a) providing
 - (i) notice of hearing under section 8,
 - (ii) notice of hearing in respect of a regulatory appeal under section 32, or
 - (iii) notice of hearing in respect of a reconsideration under section 34,

or

(b) publishing a decision under section 7.1, 28, 33 or 35,

the Regulator shall post the notice of hearing or decision on its website and provide the notice or decision in any other form and manner the Regulator considers appropriate.

AR 99/2013 s38;203/2013

Directions

39 The Regulator may, at any time before making a decision on a proceeding, issue any directions that it considers necessary for the fair determination of an issue.

On-site visits

40 The Regulator may, with or without the parties, conduct an on-site visit of lands, water bodies or facilities to better determine any matter relevant to a proceeding before it.

AR 99/2013 s40;203/2013

Setting of time limits and extending or abridging time

41(1) The Regulator may set time limits for doing anything provided for in these Rules.

(2) Unless otherwise provided, the Regulator may, on its own initiative or on motion by a party, extend or abridge a time limit specified or prescribed in these Rules or set by the Regulator, on any terms that the Regulator considers appropriate.

(3) The Regulator may exercise its discretion under this section before or after the expiration of a time limit specified in these Rules or set by the Regulator.

AR 99/2013 s41;203/2013

Variation of Rules

42 The Regulator may dispense with, vary or supplement all or any part of these Rules if it is satisfied that the circumstances of any proceeding require it.

AR 99/2013 s42;203/2013

43 Repealed AR 203/2013 s26.

Motions

44(1) If a matter arises in a proceeding, other than during an oral hearing or electronic hearing, that requires a decision or order of the Regulator, a party may bring the matter before the Regulator by filing a motion.

- (2)** A motion filed under subsection (1) must
- (a) be in writing,
 - (b) briefly describe
 - (i) the decision or order sought,
 - (ii) the grounds on which the motion is made, and
 - (iii) the nature of any oral or documentary evidence sought to be presented in support of the motion,
- and
- (c) be accompanied with
 - (i) an affidavit setting out a clear and concise statement of the facts relevant to the motion, and
 - (ii) any documents that might support the motion.
- (3)** A party filing a motion under subsection (1) shall serve a copy of it on the other parties.
- (4)** A party who wishes to respond to a motion filed under subsection (1) shall file and serve, as directed by the Regulator, a response.
- (5)** A response under subsection (4) must
- (a) be in writing,
 - (b) briefly describe the nature of any oral or documentary evidence sought to be presented in support of the response, and
 - (c) be accompanied with any documents that might support the response.
- (6)** A party who wishes to reply to a response to a motion under subsection (4) shall file and serve, as directed by the Regulator, a reply.
- (7)** A reply under subsection (6) must
- (a) be in writing,
 - (b) briefly describe the nature of any oral or documentary evidence sought to be presented in support of the reply, and

- (c) be accompanied with any documents that might support the reply.

(8) If the Regulator decides to hear oral submissions on a motion filed under subsection (1), the Regulator shall give at least 2 days' notice to each party stating the time and place of the hearing.

(9) If a matter arises in an oral hearing or electronic hearing that requires a decision or order of the Regulator, a party may bring the matter before the Regulator by filing a motion.

(10) A motion filed under subsection (9)

- (a) may be made orally, and
- (b) must be disposed of in accordance with the procedures the Regulator directs.

Late filing

45 Unless the Regulator permits otherwise, no party may file a document, statement of concern or submission after the time limit set out by the Regulator has elapsed.

AR 99/2013 s45;203/2013

Adjournments

46 The Regulator may, on its own initiative or on motion by a party, adjourn a proceeding on any terms that the Regulator considers appropriate.

Filing of documents

47(1) If a person is required to file a document with the Regulator, the person shall

- (a) file the original document with the required number of copies, if any, as set out in the relevant statutory provision or publication, and
- (b) indicate on the original document
 - (i) the application number,
 - (ii) the date of filing, and
 - (iii) the name of each person on whom the person will serve or has served a copy of the document.

(2) Subsection (1)(b)(i) does not apply if the document is an application.

- (3) Where a person files a document in relation to a proposed application prior to the filing of an application or the commencement of a proceeding, the person shall file the original document in accordance with subsection (1)(a).
- (4) Subject to subsection (6), a document may be filed by personal delivery, courier service, ordinary mail, fax, electronic means or other means as directed by the Regulator.
- (5) If a document is filed by fax or electronic means, the original and the required number of copies of the document, as set out in the relevant statutory provision or publication, must be delivered in writing to the Regulator by the end of the next business day or as directed by the Regulator.
- (6) A document may be filed by electronic means only if
- (a) the electronic means is compatible with the Regulator's information technology, equipment, software and processes, and
 - (b) the document is in a form acceptable to the Regulator.
- (7) A document is deemed to have been filed when it is received by the Regulator at its office in Calgary unless it is received after the Regulator's business hours, in which case the document is deemed to have been filed on the next business day of the Regulator.
- (8) The Regulator may require all or any part of a document filed to be verified by affidavit.

AR 99/2013 s47;203/2013

Service of documents

- 48(1)** Subject to subsection (3), a document required to be served under these Rules or by the Regulator may be served on a person
- (a) by personal delivery,
 - (b) by courier service, ordinary mail, fax or electronic means to the address
 - (i) given by the person, or
 - (ii) where these Rules require a document to be served on the registered owner of land, by courier service or registered mail to the address recorded on the certificate of title of the land,

or

(c) by any other method as the Regulator directs.

(2) If a person required to serve a document on a proponent of a proposed application or an applicant fails to do so, the Regulator may serve a copy of the statement of concern or other document on the proponent or the applicant.

(3) A document may be served by electronic means only if the person being served has the information technology, equipment, software and processes for receiving or retrieving the document.

(4) The date of service of a document is the day on which the person being served receives the document unless it is received after 5 p.m., in which case the date of service is deemed to be the next business day.

(5) The Regulator may require a person to file an affidavit of service setting out when and on whom a document was served and the means taken to effect service.

(6) Where an oral hearing or electronic hearing is in progress, a party entering a document as an exhibit shall provide copies of the document to the Regulator, the Regulator staff attending the hearing and the other parties.

(7) Any document required to be served on a party under these Rules may be served on the party's representative.

AR 99/2013 s48;203/2013

Public record

49(1) Subject to this section, all documents filed in respect of a proceeding, including any statements of concern or other documents filed prior to the commencement of the proceeding, must be placed on the public record.

(2) If a party wishes to keep confidential any information in a document, the party may, before filing the document, file a request for confidentiality and serve a copy of the request on the other parties.

(3) A request for confidentiality must

(a) be in writing,

(b) briefly describe

(i) the nature of the information in the document that is the subject of the request, and

- (ii) the reasons for the request, including the specific harm that might result if the document were placed on the public record,

and

- (c) indicate whether all or only a part of the document is the subject of the request.

(4) The Regulator may, with or without a hearing, grant a request for confidentiality on any terms it considers appropriate

(a) if

- (i) disclosure of the information could reasonably be expected to reveal personal information that has consistently been treated as confidential by the person the information is about, and
- (ii) the Regulator considers that the person's interest in confidentiality outweighs the public interest in disclosing the information on the public record of the proceeding,

or

- (b) if the information is commercial, financial, scientific or technical in nature and the Regulator is of the opinion that disclosure of the information on the public record of the proceeding could reasonably be expected
 - (i) to cause significant harm to the competitive position of a party, or
 - (ii) to result in undue financial loss or gain to any person or organization.

(5) If the Regulator grants a request for confidentiality under subsection (4), a party may receive a copy of the document only if the party files an undertaking stating that the party will hold the document in confidence and use it only for the purpose of the proceeding.

(6) Nothing in this section limits the operation of any statutory provision that protects the confidentiality of information or documents.

(7) This section does not apply in respect of information and documents referred to in section 35 of the *Environmental Protection and Enhancement Act*, section 166 of the *Public Lands Administration Regulation* (AR 187/2011) or section 15 of the *Water (Ministerial) Regulation* (AR 205/98).

AR 99/2013 s49;203/2013

Technical reports

50 A document containing a technical report or material of a technical nature must indicate the technical qualifications of the person signing or taking responsibility for the report or material.

Revisions to documents

51(1) Notwithstanding any other provision in these Rules, the Regulator may, on any terms it considers appropriate,

- (a) allow a revision of all or any part of a document, or
- (b) order the revision of all or any part of a document if, in the Regulator's opinion,
 - (i) the document or part of the document is not relevant or might prejudice or delay a fair hearing of an application or other proceeding on the merits, or
 - (ii) the revision is necessary for the purpose of hearing and determining the pertinent questions in issue in the proceeding.

(2) A party shall revise a document if

- (a) significant new information relating to the document becomes available before the proceeding is disposed of, and
- (b) the information is necessary for the purpose of hearing and determining the pertinent questions in issue in the proceeding.

(3) Any document that is revised must clearly indicate the date of the revision and the part of the document that is revised.

Affidavits

52(1) An affidavit intended to be used in a proceeding must be confined to those facts within the knowledge of the person making the affidavit or based on the information and belief of the person making the affidavit.

(2) If a statement is made in an affidavit on information and belief, the source of the information and the grounds on which the belief is based must be set out in the affidavit.

(3) If an affidavit refers to an exhibit, the exhibit must be identified as an exhibit and attached to the affidavit.

Evidence

53(1) Unless the Regulator otherwise directs, if a party intends to present documentary evidence at an oral hearing or electronic hearing, or is directed to do so by the Regulator, the party shall file the documentary evidence and serve a copy of it on the other parties before the hearing takes place and in accordance with any time limits set out by the Regulator.

(2) The documentary evidence must be accompanied with a statement setting out the qualifications of the person who prepared the documentary evidence or under whose direction or control the evidence was prepared.

Failure to comply with rules

54(1) If a party to a proceeding fails to comply with any provision of these Rules that was not waived or varied, or with any order, ruling or direction made by the Regulator under these Rules, the Regulator may consider that party's conduct

- (a) when ruling upon any request for adjournment,
- (b) in assessing costs, and
- (c) in determining whether to make any other order, ruling or direction the Regulator considers appropriate.

(2) If a party fails to comply with these Rules or a direction of the Regulator, the Regulator may

- (a) make an order that the Regulator considers appropriate to ensure the fair determination of an issue, or
- (b) adjourn the proceeding until it is satisfied that these Rules or the direction of the Regulator has been complied with.

(3) If a party fails to comply with a time limit specified in these Rules or set by the Regulator for the filing of documentary evidence or other material, the Regulator may, in addition to its powers under subsection (2), disregard the documentary evidence or other material.

(4) No proceeding is invalid by reason of a defect or other irregularity in form.

AR 99/2013 s54;203/2013

Additional information, documents and material

55(1) The Regulator may direct a party to file any further information, documents or material the Regulator considers necessary to permit a full and satisfactory understanding of an issue in a proceeding.

(2) If the party does not file the information, documents or material when directed to do so by the Regulator under subsection (1), the Regulator may

- (a) adjourn the proceeding until the information, documents or material is filed, or
- (b) make any other order or direction it considers appropriate.

AR 99/2013 s55;203/2013

Correction of errors

56 The Regulator may correct typographical errors, errors of calculation and similar errors made in any of its decisions.

Fees for services provided by Regulator

57 When the Regulator publishes a notice in respect of an application, hearing or other proceeding, the Regulator may order that the cost of publication be paid in whole or in part by a party to the application, hearing or other proceeding.

Division 2 Costs

Costs

58(1) In this Division,

- (a) “costs order” means an order of the Regulator awarding costs on a claim for costs;
- (b) “Directive” means the REDA Energy Cost Claims Directive, as amended from time to time, published by the Regulator;
- (c) “participant” means a person or a group or association of persons who have been permitted to participate in a hearing for which notice of hearing is issued or any other proceeding for which the Regulator has decided to

conduct binding dispute resolution, but unless otherwise authorized by the Regulator, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource;

- (d) “scale of costs” means the Alberta Energy Regulator Scale of Costs, as amended from time to time, published by the Regulator.

(2) A participant as defined in subsection (1)(c) includes a requester in respect of a regulatory appeal.

AR 99/2013 s58;203/2013

Considerations for awarding costs

58.1 The Regulator shall consider one or more of the following factors when making a decision in respect of an application by a participant for an advance of funds request, an interim award of costs or a final award of costs:

- (a) whether there is a compelling reason why the participant should not bear its own costs;
- (b) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
- (c) in the case of an advance of funds, whether the submission of the participant will contribute to the binding dispute resolution meeting or hearing;
- (d) in the case of interim costs, whether the participant,
 - (i) has a clear proposal for the interim costs, and
 - (ii) has demonstrated a need for the interim costs;
- (e) whether the participant has made an adequate attempt to use other funding sources;
- (f) whether the participant has attempted to consolidate common issues or resources with other parties;
- (g) in the case of final costs, whether an advance of funds or interim costs were awarded;
- (h) whether the application for an advance of funds or for interim or final costs was filed with the appropriate information;

- (i) whether the participant required financial resources to make an adequate submission;
- (j) whether the submission of the participant made a substantial contribution to the binding resolution meeting, hearing or regulatory appeal;
- (k) whether the costs were reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participant's submission;
- (l) whether the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Regulator;
- (m) the conduct of any participant that tended to shorten or to unnecessarily lengthen the proceeding;
- (n) a participant's denial of or refusal to admit anything that should have been admitted;
- (o) whether any step or stage in the proceedings was
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (p) whether the participant refused to attend a dispute resolution meeting when required by the Regulator to do so;
- (q) the participant's efforts, if any, to resolve issues associated with the proceeding directly with the applicant through a dispute resolution meeting or otherwise;
- (r) any other factor that the Regulator considers appropriate.

AR 203/2013 s33

Advance of funds request

59(1) A participant may, in accordance with the timelines set out in the notice of hearing for an application or regulatory appeal, make a request to the Regulator for an advance of funds in accordance with the Directive.

(2) The Regulator may award an advance of funds to a participant if it finds it appropriate to do so in the circumstances of a case, taking into account the factors listed in section 58.1.

(3) If the Regulator awards an advance of funds to a participant under subsection (2), the Regulator shall

- (a) direct the applicant, in the case of an application, or the approval holder, in the case of a regulatory appeal, to advance funds to the participant, and
- (b) set out the terms for repayment of the advance of funds to the applicant or approval holder by the participant.

AR 99/2013 s59;203/2013

Budget to be filed

60 The Regulator may, at any time during a proceeding, require a participant to file a budget of the participant's anticipated costs in the proceeding in accordance with the Directive.

Interim awards

61(1) A participant may apply to the Regulator for an award of interim costs incurred in a proceeding by filing an interim costs claim in accordance with the Directive.

(2) A participant may claim interim costs only in accordance with the scale of costs.

(3) The Regulator may award interim costs to a participant if it finds it appropriate to do so in the circumstances of a case, taking into account the factors listed in section 58.1.

(4) If the Regulator awards interim costs to a participant under subsection (3), the Regulator shall

- (a) direct the applicant, in the case of an application, or the approval holder, in the case of a regulatory appeal, to pay the interim costs to the participant, and
- (b) set out the terms for repayment of the interim costs to the applicant or the approval holder by the participant if the Regulator varies or denies costs on the claim for costs filed by the participant at the close of the proceeding.

AR 99/2013 s61;203/2013

Claim for costs

62(1) A participant may apply to the Regulator for an award of costs incurred in a proceeding by filing a costs claim in accordance with the Directive.

(2) A participant may claim costs only in accordance with the scale of costs.

- (3) Unless otherwise directed by the Regulator, a participant shall
- (a) file a claim for costs within 30 days after the hearing record is complete or as otherwise directed by the Regulator, and
 - (b) serve a copy of the claim on the other participants.
- (4) After receipt of a claim for costs, the Regulator may direct a participant who filed the claim for costs to file additional information or documents with respect to the costs claimed.
- (5) If a participant does not file the information or documents in the form and manner, and when directed to do so by the Regulator under subsection (4), the Regulator may dismiss the claim for costs.

Comments on claim for costs

63 Unless otherwise specified by the Regulator,

- (a) within 14 days of the deadline for the filing of a claim for costs referred to in section 62, the applicant or the approval holder, as the case may be, in the proceeding to which the costs relate shall file and serve on the participant who filed the claim for costs a submission detailing any questions and comments on the costs claimed, and
- (b) within 14 days of the receipt of the applicant's or the approval holder's comments under clause (a), the participant shall file and serve on the applicant or the approval holder a reply respecting those comments.

AR 99/2013 s63;203/2013

Costs awarded

64 The Regulator may award costs to a participant if it finds it appropriate to do so in the circumstances of a case, taking into account the factors listed in section 58.1.

AR 99/2013 s64;203/2013

Liability for costs

65 Unless the Regulator otherwise directs, an applicant or approval holder shall pay the costs awarded to a participant.

AR 99/2013 s65;203/2013

Costs order

66(1) Where the Regulator has awarded costs in a proceeding, the Regulator shall issue a costs order setting out the amount awarded and to whom and by whom the payment must be made.

(2) The Regulator shall serve a copy of the costs order on the participant making the claim and on the applicant or the approval holder, as the case may be.

(3) An applicant or approval holder named in a costs order shall pay the amount awarded to the participant within 30 days of being served with a copy of the costs order under subsection (2).

(4) No order for the payment of costs may be made against the Regulator or its employees.

AR 99/2013 s66;203/2013

Award of costs

67 A certified copy of a costs order made under section 66 may be filed in the office of the clerk of the Court of Queen's Bench, and on filing and on payment of any fees prescribed by law, the order shall be entered as a judgment of the Court and may be enforced according to the ordinary procedure for enforcement of a judgment of the Court.

Part 6

Expiry and Coming into Force

Expiry

68 For the purpose of ensuring that these Rules are reviewed for ongoing relevancy and necessity, with the option that they may be repassed in their present or an amended form following a review, these Rules expire on May 31, 2018.

Coming into force

69 These Rules come into force on the coming into force of section 61 of the *Responsible Energy Development Act*.



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