



Province of Alberta

ELECTRIC UTILITIES ACT

PAYMENT IN LIEU OF TAX REGULATION

Alberta Regulation 112/2003

With amendments up to and including Alberta Regulation 138/2019

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Office Consolidation

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(Consolidated up to 138/2019)

ALBERTA REGULATION 112/2003

Electric Utilities Act

PAYMENT IN LIEU OF TAX REGULATION

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Interpretation

1(1) In this Regulation,

- (a) “Act” means the *Electric Utilities Act*;
- (b) “affiliate” has the meaning given to it in the *Business Corporations Act*;
- (c) “balancing pool payment” means an amount calculated in accordance with this Regulation that a municipal entity
 - (i) must pay to the Balancing Pool for a year, or
 - (ii) is entitled to receive from the Balancing Pool for a year;

- (d) “fair market value” means the price available in an open and unrestricted market between informed and prudent parties, acting at arm’s length and under no compulsion to act, expressed in terms of money;
- (e) “Minister” means the President of Treasury Board and Minister of Finance;
- (f) “municipal entity” means a municipal entity as defined in section 147(1) of the Act and also includes
 - (i) each municipality or subsidiary of a municipality that provides a regulated rate tariff,
 - (ii) each municipality or subsidiary of a municipality that owns or operates an electric distribution system, and
 - (iii) each municipality or subsidiary of a municipality that owns or operates a transmission facility;
- (g) repealed AR 172/2006 s2;
- (g.1) “service area of the municipality” means,
 - (i) in respect of electric distribution systems,
 - (A) the area within the boundary of that municipality,
 - (B) the area outside the boundary of that municipality where the Commission has granted the municipality or its subsidiary the right to provide distribution access service to a customer, but not including any area in which that municipality or its subsidiary acquires electric distribution system assets and any associated Commission approved service area from another owner of an electric distribution system after December 31, 2006, unless, for each acquisition, the electric distribution system assets and any associated Commission approved service area acquired provide distribution access service to fewer than 100 customers or are acquired as part of an annexation by that municipality of that area, and
 - (C) the area outside the boundary of that municipality in an adjacent service area where the municipality or its subsidiary is providing distribution access service to a customer to whom distribution access service is not being

provided by the electric distribution system approved by the Commission to distribute electric energy in that adjacent service area,

and

- (ii) in respect of transmission facilities,
 - (A) the area within the boundary of that municipality,
 - (B) any area outside the boundary of that municipality that is within a right-of-way used for transmission facilities owned by that municipality or its subsidiary on December 31, 2006, and
 - (C) any area outside the boundary of that municipality that is used for transmission facilities owned by that municipality or its subsidiary on December 31, 2006.

(h) “tax Acts” means

- (i) the *Income Tax Act* (Canada) and the regulations made under that Act, and
- (ii) the *Alberta Corporate Tax Act* and the regulations made under that Act;

(i) “year” means

- (i) January 1 of a year to December 31 of that year, or
- (ii) where a municipal entity uses a fiscal year that is different from the period described in subclause (i), the fiscal year of the municipal entity.

(2) Words and phrases used in this Regulation and not defined in the Act or this Regulation have the meaning given to them in the tax Acts.

(3) For the purposes of this Regulation, the reference to “this Act” in subsections 245(1) and (4) of the *Income Tax Act* (Canada) must be read as if it were a reference to the *Electric Utilities Act*.

AR 112/2003 s1;105/2005;172/2006;256/2007;
68/2008;31/2012;62/2013;114/2018

Estimate of balancing pool payment

2(1) Each year, a municipal entity must estimate the balancing pool payment that the entity must pay to or is entitled to receive from the Balancing Pool for the year.

(2) The balancing pool payment is equal to

(a) the amount the municipal entity would be required to pay as tax for that year pursuant to

(i) Parts I and I.3 of the *Income Tax Act* (Canada), and

(ii) the *Alberta Corporate Tax Act*,

or

(b) the refund the municipal entity would be entitled to receive for that year pursuant to

(i) Parts I and I.3 of the *Income Tax Act* (Canada), and

(ii) the *Alberta Corporate Tax Act*,

if the municipal entity were not exempt from taxation under section 149 of the *Income Tax Act* (Canada) and section 35 of the *Alberta Corporate Tax Act*.

(3) The municipal entity must take into consideration the requirements of section 6 when preparing its estimate under this section.

Estimate based on specified business income or loss

3(1) Subject to section 4, the estimate required under section 2(1) must be based on the income earned or losses incurred by the municipal entity in respect of

(a) the generation of electricity in Alberta at a generating unit

(i) that the municipal entity

(A) owns or holds an interest in, or

(B) leases,

and

(ii) to which a power purchase arrangement applies,

(b) the exchange, purchase or sale by the municipal entity of electricity in Alberta,

- (c) the provision by the municipal entity of retail electricity services to customers in Alberta, other than services within the service area of the municipality relating to the ownership or operation of
 - (i) transmission facilities, or
 - (ii) an electric distribution system,
- (c.1) the ownership or operation of a transmission facility or an electric distribution system outside the service area of the municipality,
- (d) the export by the municipal entity of electricity to a jurisdiction outside Alberta,
- (e) the sale by the municipal entity in Alberta of electricity imported from a jurisdiction outside Alberta, and
- (e.1) repealed AR 138/2019 s2,
- (f) any swap, option, agreement, derivative, futures contract or other arrangement entered into by the municipal entity relating to an activity described in clauses (a) to (e).

(1.1) Revenue received by a municipal entity from

- (a) the ownership or operation of transmission facilities or an electric distribution system outside the service area of the municipality, and
- (b) a customer who chooses to purchase electricity under a regulated rate tariff

is to be considered income received by the municipal entity for the purposes of section 147(3) of the Act.

(2) Where a municipal entity pays a tax in a jurisdiction outside Alberta in respect of income earned from the sale of electricity in that jurisdiction, the municipal entity may deduct from the estimate required under section 2(1) the lesser of

- (a) the amount tax paid on that income in that jurisdiction, and
- (b) the amount that would be payable under this Regulation in respect of that income.

AR 112/2003 s3;172/2006;243/2018;138/2019

Deemed value of capital property and eligible capital property

- 4(1)** Where a municipal entity to which this Regulation applies disposes of capital property or eligible capital property, whether deemed or actual, the property is deemed to have been disposed of at its cost amount immediately before the disposition.
- (2)** Where a municipal entity to which this Regulation applies acquires capital property or eligible capital property in the transaction referred to in subsection (1), the property is deemed to have been acquired at its cost amount referred to in subsection (1).
- (3)** Where a municipal entity to which this Regulation applies acquires capital property or eligible capital property referred to in subsection (1) at any time from a person to which this Regulation does not apply, the property is deemed to have been acquired at the lesser of
- (a) its cost amount immediately before the last disposition by a municipal entity described in subsection (1), and
 - (b) its fair market value at the date of the acquisition referred to in this subsection.

Method of calculating estimate

- 5** An estimate under section 2(1) must be calculated in accordance with the method set out in the tax Acts.

Calculation of actual balancing pool payment

- 6(1)** Not later than the last day of the 2nd month following the end of a year, a municipal entity must
- (a) calculate in accordance with sections 3 and 5 the actual balancing pool payment that the entity must pay to or is entitled to receive from the Balancing Pool for the year, and
 - (b) if the actual balancing pool payment is greater than the total of the instalments made by the municipal entity in the year, pay the difference to the Balancing Pool.
- (2)** When calculating the actual balancing pool payment under subsection (1)(a), the municipal entity
- (a) repealed AR 172/2006 s4,
 - (b) must, in a fair and reasonable manner, allocate its costs and revenues for the year and its assets, liabilities and equity as at the end of the year, as relating

- (i) to that portion of the municipal entity's operations in respect of which a balancing pool payment must be calculated under this Regulation, or
- (ii) to that portion of the municipal entity's operations in respect of which no balancing pool payment need be calculated under this Regulation.

(3) When calculating the actual balancing pool payment under subsection (1)(a), the municipal entity must value the sale, lease, exchange, transfer or other disposition of goods or services between the municipal entity and its affiliate at fair market value.

(4) If the value of the transaction referred to in subsection (3) is regulated by a municipal, provincial or federal government or government agency, the regulated value is considered to be the fair market value.

(5) Subsections (3) and (4) do not apply to transactions to which section 4 applies.

AR 112/2003 s6;172/2006

Payment to Balancing Pool

7 Where a municipal entity must pay a balancing pool payment to the Balancing Pool,

- (a) the entity must make the payment in instalments based on the estimate prepared under section 2(2)(a), and
- (b) the instalments must be calculated and paid in accordance with the tax Acts.

Duty to file returns

8 Not later than the last day of the 6th month following the end of each year, a municipal entity must file with the Minister the return or returns that would be required to be filed if the municipal entity were not exempt from taxation under section 149 of the *Income Tax Act* (Canada) and section 35 of the *Alberta Corporate Tax Act*.

Duty to keep records

9 For 6 years following the last day of each year for which a balancing pool payment is calculated, a municipal entity must keep records to support the calculation of the actual balancing pool payment.

Refund

10(1) A municipal entity is entitled to receive a balancing pool payment from the Balancing Pool

- (a) where the total of the instalments paid by the municipal entity in a year is greater than the actual balancing pool payment calculated under section 6 for that year,
- (b) where the municipal entity elects, in accordance with the tax Acts, to carry back to a previous year a loss reported on a return filed under section 8, or
- (c) where, after the municipal entity has paid the instalments required under this Regulation for a year, the municipal entity is assessed a tax pursuant to
 - (i) Parts I and I.3 of the *Income Tax Act* (Canada), and
 - (ii) the *Alberta Corporate Tax Act*.

(2) The amount a municipal entity is entitled to receive under subsection (1) is the difference between

- (a) the amount actually paid by the municipal entity for a year, and
- (b) the amount required to be paid by the municipal entity under this Regulation for the year.

(3) No refund is payable under subsection (2) where the difference calculated is less than \$0.

(4) A municipal entity that is entitled to receive a balancing pool payment under this section is entitled to interest from the Balancing Pool in the amount that would be payable and on the terms that would apply if a refund were payable to the municipal entity under the tax Acts.

Penalties and interest

11(1) A municipal entity that fails to comply with an obligation under the tax Acts that would have applied to it if the municipal entity were not exempt from taxation under those Acts is subject to the penalty or interest, or both, that is payable under those Acts for that failure.

(2) A municipal entity that fails to comply with an obligation under this Regulation is subject to the penalty or interest, or both, that is payable under the tax Acts for that failure.

(3) Any penalty or interest payable pursuant to this section must be paid to the Balancing Pool at the time that the penalties and interest are payable under the tax Acts.

Application of tax Acts

12(1) The Minister

- (a) may take any action with respect to returns and payments required under this Regulation that the Canada Revenue Agency or the Minister is authorized to take with respect to returns and payments of tax under the tax Acts, and
- (b) is subject to the obligations of the Canada Revenue Agency and the Minister under the tax Acts.

(2) Except as modified by this Regulation, a municipal entity

- (a) is entitled to the benefits of the rights, processes, procedures and remedies available to taxpayers under the tax Acts, and
- (b) is subject to the obligations of taxpayers under the tax Acts.

(3) A decision of the Minister that under the tax Acts would be subject to appeal to a court may be appealed to the Court of Queen's Bench of Alberta.

AR 112/2003 s12;288/2009

Costs of Minister

13 Any costs incurred by the Minister to administer this Regulation are payable from the Balancing Pool.

Application of section 149(10) of Income Tax Act (Canada)

14(1) Where after the coming into force of this Regulation a municipal entity becomes subject to this Regulation, subsection 149(10) of the *Income Tax Act* (Canada) applies.

(2) Where a municipal entity ceases to be subject to this Regulation, subsection 149(10) of the *Income Tax Act* (Canada) applies subject to section 4(1) of this Regulation.

Use and disclosure of information

15 Section 77 of the *Alberta Corporate Tax Act* applies to information in the custody or under the control of the Minister.

Repeal

16(1) The *Payment in Lieu of Tax Regulation* (AR 236/2001) is repealed.

(2) Notwithstanding subsection (1) and subject to subsection (3), the *Payment in Lieu of Tax Regulation* (AR 236/2001) continues to apply to balancing pool payments required to be paid to or from the Balancing Pool in respect of a year ending in 2001 or 2002 as if that Regulation had not been repealed.

(3) For the purposes of subsection (2), a reference in the *Payment in Lieu of Tax Regulation* (AR 236/2001) to “balancing pool” is to be read as a reference to the Balancing Pool.

Expiry

17 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 October 31, 2022.

AR 112/2003 s17;172/2006;170/2017

Coming into force

18 This Regulation comes into force on the coming into force of Parts 1 to 10 of the *Electric Utilities Act*, SA 2003 cE-5.1.



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