

(no amdt)

**ALBERTA REGULATION 266/2007**  
**Alberta Utilities Commission Act**  
**MARKET SURVEILLANCE REGULATION**

*Table of Contents*

- 1 Definitions
- 2 Duty of ISO to make records available to MSA
- 3 MSA access to records of market participants, the ISO and the Balancing Pool
- 4 No fee payable by MSA
- 5 Right to use records
- 6 Confidentiality and public disclosure of records
- 7 MSA investigation procedures
- 8 MSA guidelines
- 9 Evidence taken outside Alberta
- 10 Evidence taken in Alberta
- 11 Repeal
- 12 Expiry
- 13 Coming into force

**Definitions**

- 1 In this Regulation,
  - (a) “Act” means the *Alberta Utilities Commission Act*;
  - (b) “Court” means the Court of Queen’s Bench;
  - (c) “electricity market” has the meaning given to it in Part 5 of the Act;
  - (d) “electricity market participant” has the meaning given to it in Part 5 of the Act;
  - (e) “ISO” means the Independent System Operator established by the *Electric Utilities Act*;
  - (f) “market participant” means an electricity market participant or a natural gas market participant;
  - (g) “MSA” means the Market Surveillance Administrator continued under the Act;

- (h) “natural gas market” has the meaning given to it in Part 5 of the Act;
- (i) “natural gas market participant” has the meaning given to it in Part 5 of the Act;
- (j) “objection” means an objection filed with the MSA by a market participant in accordance with section 6(5);
- (k) “record” has the meaning given to it in the *Electric Utilities Act*.

**Duty of ISO to make records available to MSA**

**2(1)** The ISO must, in accordance with this section, make available to the MSA any records relating to electricity market participants that are held by or become available to the ISO pursuant to its mandate under the *Electric Utilities Act* or the regulations made under that Act, including any records that are created by the ISO from records provided by electricity market participants.

**(2)** The rules made by the ISO under sections 19 and 20 of the *Electric Utilities Act* must reflect

- (a) the right of the MSA to receive the records referred to in subsection (1), and
- (b) the duty of the ISO to make the records referred to in subsection (1) available to the MSA.

**(3)** On receiving a request from the MSA for records referred to in subsection (1), the ISO must make arrangements with the MSA for the timely and ongoing transfer of the records to the MSA.

**(4)** Records must be made available under this section

- (a) through secure electronic links, or
- (b) in any other secure manner agreed to by the MSA and the ISO.

**MSA access to records of market participants, the ISO and the Balancing Pool**

**3(1)** If the MSA requests the production of records by a market participant, the ISO or the Balancing Pool in accordance with section 46 of the Act, the market participant, the ISO or the Balancing Pool, as the case may be, must provide the MSA with those records as soon as reasonably practicable.

(2) Market participants and the Balancing Pool must take reasonable steps to ensure at all times that records provided to the ISO and to the MSA are complete and accurate.

**No fee payable by MSA**

4 No fee is payable by the MSA for access to or transfer to it of any record, or for the preparation of any record, that is necessary for the purposes of its mandate under any enactment.

**Right to use records**

5(1) Subject to section 6, the MSA is entitled to use any record obtained pursuant to an enactment and any record created by the MSA for the purposes of its mandate under any enactment.

(2) The MSA is not required to obtain the consent of a market participant whose records the MSA has obtained before using the records in accordance with subsection (1).

**Confidentiality and public disclosure of records**

6(1) Any record provided to or obtained by the MSA must be kept confidential by the MSA unless

- (a) disclosure is permitted or required under this section, another enactment or the rules of the Commission or the Court, or
- (b) the record has otherwise been made public.

(2) The MSA may make public the following:

- (a) reports created by the MSA on matters relating to its mandate, including its findings and views on market events or conditions, and such reports may contain references to or reproductions of, in whole or in part, any record provided to or obtained by the MSA, except records provided to the MSA by a market participant as part of an investigation;
- (b) the commencement, progress or completion of a MSA investigation, including the subject-matter of the investigation and the name of any relevant market participant in accordance with subsection (4);
- (c) a summary, reference or other derivative of a record provided to or obtained by the MSA as part of an investigation.

(3) In considering whether to make a record public, the MSA must take into account implications

- (a) to any market participant affected by making the record public, and
- (b) to the fair, efficient and openly competitive operation of the electricity market or the natural gas market, as the case may be, of making or not making the record public.

(4) Before the MSA makes public a record that will identify a market participant by name, the MSA must, except when disclosure of the name of a party is permitted or required under the rules of the Commission or the Court,

- (a) consider
  - (i) the benefits that might reasonably be foreseen of making public the name of the market participant for the purpose of carrying out the mandate of the MSA,
  - (ii) whether making public the name of the market participant could reasonably be expected to
    - (A) result in undue financial loss to the market participant, or
    - (B) harm significantly the competitive position of the market participant,
  - (iii) the implications of not making public the name of the market participant to other market participants,
  - (iv) any practical alternatives reasonably known to the MSA, and
  - (v) any other factors the MSA considers relevant,
- (b) determine that, on balance, the factors considered under clause (a) favour making public the name of the market participant, and
- (c) give written notice to the market participant of its intention to make the record public, and the notice
  - (i) must include a copy of the content of the record that it intends to make public, and
  - (ii) must provide at least 7 days for the market participant to file an objection with the MSA in respect of being identified by name in the record that the MSA intends to make public.

- (5)** An objection referred to in a notice given under subsection (4)(c) must be filed with the MSA in writing within the period specified in the notice and must include reasons for the objection.
- (6)** If an objection is not filed in accordance with subsection (5), the MSA may make public the record identifying the name of the market participant.
- (7)** If an objection is filed in accordance with subsection (5), the MSA must, within 7 days of receiving the objection, either
- (a) decide not to identify the market participant by name when making the record public and notify the market participant of that decision, or
  - (b) give written notice to the Commission, pursuant to section 51(1)(b) of the Act, requesting that the Commission initiate a proceeding in private to review whether or not the determination made by the MSA under subsection (4)(b) is reasonable.
- (8)** A notice under subsection (7)(b) must contain a copy of the objection and a response to the objection from the MSA, including a summary of the factors the MSA considered under subsection (4)(a) and the determination the MSA made under subsection (4)(b).
- (9)** The Commission, in respect of a proceeding initiated in response to a request under subsection (7)(b),
- (a) must not consider any new reasons for an objection other than those contained in the objection filed by the market participant, and
  - (b) must conclude the proceeding and provide the MSA and the market participant with a decision within 14 days of receiving the notice requesting the proceeding, unless otherwise agreed to by the parties.
- (10)** If the Commission finds that the determination made by the MSA under subsection (4)(b)
- (a) is reasonable, the MSA may make public the record identifying the market participant by name, or
  - (b) is not reasonable, the MSA must not identify the market participant by name when making the record public.
- (11)** A decision by the Commission under subsection (9)(b) is final and may not be appealed under section 29 of the Act.

(12) The Commission must not require disclosure in any hearing or other proceeding of a record that has not otherwise been made public if the record

- (a) is created by the MSA for its internal use in carrying out its mandate, including any communication, report or memorandum relating to the deliberations of the MSA, unless the Commission finds that
  - (i) specific conduct of the MSA is relevant and material to its consideration of the matters at issue before the Commission, and
  - (ii) after having reviewed the record and considered the general protection of confidentiality regarding internal MSA records, disclosure of the record is necessary for the Commission to determine whether or not, by that specific conduct, the MSA did not comply with a provision of the Act or this Regulation,

or

- (b) is created for the purpose of communication between 2 or more parties in respect of a complaint under section 41 of the Act or a notice under section 45 of the Act.

#### **MSA investigation procedures**

**7(1)** The MSA must make public the procedures to be used in its interactions with market participants during investigations.

**(2)** If the MSA decides to materially change its investigation procedures referred to in subsection (1), the MSA must consult with market participants on the proposed changes and make public any revised investigation procedures.

#### **MSA guidelines**

**8(1)** The MSA must consult with market participants on any new guidelines it develops pursuant to section 39(4) of the Act or any existing guideline it decides to materially change.

**(2)** The MSA must make public the general process used by the MSA to develop the guidelines referred to in section 39(4) of the Act.

**(3)** If the MSA decides to materially change its process referred to in subsection (2), the MSA must consult with market participants on the proposed changes and make public any revised process.

**Evidence taken outside Alberta**

**9(1)** The MSA may apply to the Court for an order

- (a) appointing a person to take evidence of a witness outside Alberta for use in an investigation or hearing before the Commission, and
- (b) providing for the issuance of a written request directed to the judicial authorities of the jurisdiction in which the witness is to be found for the issuance of any process as is necessary
  - (i) to compel the witness to attend to give evidence on oath or otherwise before the person appointed under clause (a), and
  - (ii) to produce any record relevant to the subject-matter of the investigation or hearing.

**(2)** The practice and procedure respecting

- (a) an appointment under this section,
- (b) the taking of evidence, and
- (c) the certifying and return of the appointment

must, to the extent possible, be the same as those that govern similar matters in civil proceedings in the Court.

**(3)** Unless the Court otherwise provides, the making of an order under subsection (1) does not determine whether evidence obtained pursuant to the order is admissible in a hearing before the Commission.

**(4)** Nothing in this section is to be construed so as to limit any power that the Commission or the MSA may have to obtain evidence outside Alberta by any other means, including under any other enactment or by the operation of law.

**Evidence taken in Alberta**

**10(1)** If a body is empowered by an enactment to carry out surveillance in respect of any activity related to the operation of the electricity market or the natural gas market in a jurisdiction outside Alberta, and the Court is satisfied that a tribunal of competent jurisdiction in a jurisdiction outside Alberta has properly authorized that body to obtain testimony and evidence in Alberta from a witness located in Alberta, the Court may

- (a) order the attendance of the witness for the purpose of being examined,
- (b) order the production of any record mentioned in the order, and
- (c) give directions as to the time and place of the examination and all other matters with respect to the examination as the Court considers appropriate.

(2) In subsection (1), “tribunal” includes a court.

#### **Repeal**

**11** The following are repealed:

- (a) the *Market Surveillance Regulation* (AR 166/2003);
- (b) the *Tribunal Process and Procedure Regulation* (AR 170/2003).

#### **Expiry**

**12** For the purposes 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 November 30, 2014.

#### **Coming into force**

**13** This Regulation comes into force on the coming into force of the *Alberta Utilities Commission Act*.