

# ALBERTA UTILITIES COMMISSION ACT

## Chapter A-37.2

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HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Interpretation**

- 1** In this Act,
- (a) “Chair” means the Chair of the Commission;
  - (b) “Commission” means the Alberta Utilities Commission established under section 2;
  - (c) “Commission rules” means rules of the Commission made under this Act or any other enactment;
  - (d) “ISO rules” means rules made by the Independent System Operator under the *Electric Utilities Act*;
  - (e) “member” means a member of the Commission;

- (f) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (g) “reliability standards” means reliability standards as defined in the *Electric Utilities Act*.

2007 cA-37.2 s1;2009 c44 s1

## **Part 1**

### **Alberta Utilities Commission**

#### **Establishment of the Commission**

**2(1)** The Alberta Utilities Commission is established as a corporation consisting of the members appointed under section 3(1).

**(2)** The fiscal year of the Commission is April 1 to the following March 31.

#### **Membership of the Commission**

**3(1)** The Commission shall consist of not more than 9 members appointed by the Lieutenant Governor in Council, one of whom shall be designated as Chair by the Lieutenant Governor in Council.

**(2)** A person appointed to the Commission holds office for a term of not more than 5 years as set out in the appointment.

**(3)** The Lieutenant Governor in Council shall determine the remuneration of the members of the Commission, which is to be paid by the Commission.

**(4)** The Lieutenant Governor in Council may delegate to the Minister all or any of the Lieutenant Governor in Council’s powers to determine the remuneration of all or any of the members.

**(5)** A member of the Commission is eligible for reappointment for one or more terms not exceeding 5 years each.

**(6)** A member of the Commission continues to hold office after the expiry of the member’s term of office until the member is reappointed, a successor is appointed or a period of 3 months has elapsed, whichever occurs first.

**Acting Commission members**

- 4(1)** The Lieutenant Governor in Council may nominate persons from among whom acting members of the Commission may be selected.
- (2)** When in the Chair's opinion it is necessary or desirable for the proper and expeditious performance of the Commission's duties, the Chair may name one or more persons nominated under subsection (1) as acting members for any period of time or during any circumstances or for the purpose of any matter before the Commission.
- (3)** An acting member has, during the period, under the circumstances or for the purpose for which the acting member is named as an acting member, all the powers, duties, rights, protections and obligations of a member appointed under section 3 and shall receive the remuneration determined by the Chair.
- (4)** The Commission may be enlarged to more than the number of members referred to in section 3(1) by the naming of one or more acting members in accordance with this section.

**Chair and Vice-chair**

- 5(1)** The Chair has the power to act for, and in the name of, the Commission in the execution, performance and carrying out of any act, matter or thing that is within the power of the Commission, subject only to any express directions or decisions given or made by a resolution of the Commission.
- (2)** The Chair may appoint not more than 2 members as Vice-chairs of the Commission.
- (3)** At any time during which the office of Chair is vacant or the Chair is absent or unable to act as Chair, a Vice-chair shall perform all the duties and functions and may exercise all the powers of the Chair.
- (4)** If the Chair and Vice-chairs are absent or unable to act, unless the Chair has provided otherwise, the remaining members may appoint one of their number to act.

**Duty of care**

**6(1)** Every member, in exercising powers and in discharging functions and duties,

- (a) shall act honestly, in good faith and in the public interest,
- (b) shall avoid conflicts of interest, and
- (c) shall exercise the care, diligence and skill that a reasonable and prudent person would exercise under comparable circumstances.

**(2)** The Commission shall establish and maintain policies and procedures addressing the identification, disclosure and resolution of matters involving conflict of interest of members of the Commission and senior officers and employees of the Commission.

**Chief Executive**

**7(1)** The Commission shall appoint a Chief Executive and shall determine the Chief Executive's powers, duties and functions.

**(2)** The Commission shall determine the remuneration to be paid to the Chief Executive.

**Powers of the Commission**

**8(1)** The Commission has all the powers, rights, protections and privileges that are given to it or provided for under this Act and under any other enactment and by law.

**(2)** The Commission, in the exercise of its powers and the performance of its duties and functions under this Act or any other enactment, may act on its own initiative or motion and do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions.

**(3)** In addition to the powers, duties and functions conferred or imposed on the Commission by this Act or any other enactment, the Commission may carry out any other powers, duties and functions determined by the Lieutenant Governor in Council.

**(4)** The Lieutenant Governor in Council may, by order, require the Commission to carry out any function or duty specified in the order, including inquiring into, hearing and determining any matter

or thing in respect of any matter within the jurisdiction of the Commission under this Act or any other enactment, and the Commission shall without unnecessary delay comply with the order.

(5) Without restricting subsections (1) to (4), the Commission may do all or any of the following:

- (a) hear and determine all questions of law or fact;
- (b) make an order granting the relief applied for;
- (c) make interim orders;
- (d) where it appears to the Commission to be just and proper, grant partial, further or other relief in addition to, or in substitution for, that applied for as fully and in all respects as if the application or matter had been for that partial, further or other relief.

(6) An order of the Commission takes effect at the time provided for by the order or, if no time is provided for, on the date of the order.

(7) The Commission may delegate any of the powers, duties and functions conferred or imposed on it under this or any other enactment to any member or any other person unless the regulations under section 75 prohibit the delegation.

2007 cA-37.2 s8;2009 c20 s1

### **ALSA regional plans**

**8.1** In carrying out its powers, duties and functions under this Act and other enactments, the Commission shall act in accordance with any applicable ALSA regional plan.

2009 cA-26.8 s72

### **Decisions and orders**

**9(1)** Unless expressly provided by this Act or any other enactment to the contrary, and subject to this section, any order or decision that the Commission is authorized to make may be made without giving notice and without holding a hearing.

(2) If it appears to the Commission that its decision or order on an application may directly and adversely affect the rights of a person, the Commission shall

- (a) give notice of the application in accordance with the Commission rules,
  - (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
  - (c) hold a hearing.
- (3)** Notwithstanding subsection (2), the Commission is not required to hold a hearing where
- (a) no person requests a hearing in response to the notice of application, and
  - (b) on an application for the construction or operation of a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, the Commission is satisfied that the applicant has met the relevant Commission rules respecting each owner of land that may be directly and adversely affected by the Commission's decision on the application.
- (4)** Where a person is entitled to make representations to the Commission, the Commission is not required by subsection (2) to afford an opportunity to a person to make oral representations, or to be represented by counsel, if the Commission affords the person an adequate opportunity to make representations in writing.

### Reviews

- 10(1)** The Commission may in accordance with the rules made under subsection (2) review any decision or order made by it under this Act or any other enactment and after the review may confirm, rescind or vary the decision or order.
- (2)** The Commission may make rules respecting the review of any decision or order made by it, including
- (a) the criteria that the Commission may use to determine whether to review a decision or order,
  - (b) the eligibility of a person to request a review,

- (c) the information that a person requesting a review must provide to the Commission, and
  - (d) the time period within which a person may request a review by the Commission.
- (3) On receiving an application under this section, the Commission may suspend the decision or order on the terms and conditions the Commission prescribes.

#### **Commission has powers of Queen's Bench judge**

**11** In addition to any other powers conferred or imposed by this Act or any other enactment, the Commission has, in regard to the attendance and examination of witnesses, the production and inspection of records or other documents, the enforcement of its orders, the payment of costs and all other matters necessary or proper for the due exercise of its jurisdiction or otherwise for carrying any of its powers into effect, all the powers, rights, privileges and immunities that are vested in a judge of the Court of Queen's Bench.

#### **Power of Commission re contempt**

**12** A person who commits or does an act, matter or thing that would, if done in or in respect of the Court of Queen's Bench, constitute a contempt of the Court is in contempt of the Commission, and on the application of the Commission a judge of the Court may commit that person for contempt of the Commission, and the judge has the same power of committal in respect of contempt of the Commission as the judge has in respect of contempts of the Court.

## **Part 2 Hearings and Other Proceedings**

#### **Divisions of the Commission**

**13(1)** The Chair may designate any one or more members to sit as a division of the Commission and may direct that division to conduct any hearing or other proceeding that the Commission may conduct under this Act or any other enactment.

- (2) A majority of the members designated to sit as a division of the Commission constitutes a quorum at any hearing or other proceeding conducted by that division.
- (3) Any decision made or other action taken at a hearing or other proceeding conducted by a division of the Commission is the decision or action of the Commission.
- (4) A division of the Commission may exercise the powers and perform the duties and functions of the Commission under this or any other enactment with respect to the hearing or other proceeding it is directed to conduct, and for that purpose any reference to the Commission in this or any other enactment is deemed to be also a reference to a division of the Commission.
- (5) The Chair may designate a member of a division of the Commission to preside at any sitting of the division.
- (6) Two or more divisions of the Commission may sit at the same time.
- (7) If in the opinion of the Chair a member of a Division is not properly carrying out his or her duties, the Chair may remove the member from sitting in a division.

**Chair may not sit**

- 14** The Chair may not sit on a hearing or other proceeding of the Commission initiated at the request of the Market Surveillance Administrator under Part 5.

**Absence of Commission members**

- 15** When a hearing or other proceeding is conducted by the Commission and a member or members are removed from sitting under section 13(7) or 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.

**Co-operative proceedings**

**16(1)** If the Commission is of the opinion that it would be expedient or in the public interest to do so, the Commission may conduct or participate in a hearing or other proceeding in respect of or relating to matters under the Commission's jurisdiction jointly or in conjunction

- (a) with another board, commission or other body constituted in Alberta, or
- (b) subject to the approval of the Lieutenant Governor in Council and in accordance with an agreement under subsection (2), with another board, commission or other body constituted by the Government of Canada or an agency of it or by a government of a jurisdiction outside Alberta or an agency of such a government.

**(2)** The Commission may enter into any agreements it considers desirable with the Government of Canada or an agency of it or with any government of a jurisdiction outside Alberta or an agency of such a government in respect of holding hearings or other proceedings jointly or in conjunction with that government or agency.

**(3)** A hearing or other proceeding referred to in subsection (1) may be held outside Alberta.

**Public interest**

**17(1)** Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

(2) The Commission shall not under subsection (1) give consideration to whether critical transmission infrastructure as defined in the *Electric Utilities Act* is required to meet the needs of Alberta.

2007 cA-37.2 s17;2009 c44 s1

#### **Protection re evidence**

**18(1)** No person shall be excused from testifying or from producing, when ordered to do so by the Commission, any record or other document in a hearing or other proceeding of the Commission on the grounds that the testimony, record or other document might tend to incriminate the person or subject the person to penalty or forfeiture.

(2) A witness who testifies or produces records or other documents at a hearing or other proceeding under subsection (1) has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings under any other Act or regulation, except a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

#### **Witnesses at hearing**

**19(1)** The Commission may, when in its opinion the attendance of any person before the Commission is desirable, serve on the witness a notice requiring the witness's attendance before the Commission, and the notice must be signed by a member of the Commission.

(2) If a person fails or refuses to comply with a notice to attend issued by the Commission, or to produce a record or other document when ordered to do so by the Commission, the Court of Queen's Bench, on the application of the Commission, may issue a bench warrant requiring the attendance of the person before the Commission or the production by the person of the record or other document.

(3) If a witness refuses to give evidence or to answer any question before the Commission, or to produce a record or other document when ordered to do so by the Commission, the Court of Queen's Bench, on the application of the Commission, may commit the witness for contempt.

**Rules of evidence**

**20** The Commission is not bound in the conduct of its hearings by the rules of law concerning evidence that are applicable to judicial proceedings.

**Costs of proceedings**

**21(1)** The Commission may order by whom and to whom its costs and any other costs of or incidental to any hearing or other proceeding of the Commission are to be paid.

**(2)** The Commission may make rules respecting the payment of costs to an intervener other than a local intervener referred to in section 22.

**Local intervener costs**

**22(1)** For purposes of this section, “local intervener” means a person or group or association of persons who, in the opinion of the Commission,

- (a) has an interest in, and
- (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision or order of the Commission in or as a result of a hearing or other proceeding of the Commission on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, but unless otherwise authorized by the Commission does not include a person or group or association of persons whose business interest may include a hydro development, power plant or transmission line or a gas utility pipeline.

**(2)** The Commission may make rules respecting the payment of costs to a local intervener for participation in any hearing or other proceeding of the Commission.

### Part 3 Commission Orders

#### General power

**23(1)** The Commission may order any person

- (a) to do any act, matter or thing, forthwith or within or at a specified time and in any manner directed by the Commission, that the person is or may be required to do under this Act or any other enactment or pursuant to any decision, order or rule of the Commission,
- (b) to cease doing any act, matter or thing, forthwith or within or at a specified time, that is in contravention of this Act or any other enactment or any decision, order or rule of the Commission, and
- (c) to comply with a provision of an ALSA regional plan.

**(2)** If a rule, order or decision of the Commission requires that an act, matter or thing be done within a specified time and in the opinion of the Commission the circumstances so require, the Commission may, on giving any notice that it considers reasonable, or in its discretion without notice, extend the time so specified.

2007 cA-37.2 s23;2009 cA-26.8 s72

#### Orders without notice

**24(1)** Where notice to interested parties to a hearing or other proceeding is required, the Commission may, if it is of the opinion that the matter is urgent, or for other reasons appearing to the Commission to be sufficient, hear the application or make the decision or order as if due notice had been given to all parties, and the decision or order is as valid and has effect in all respects as if made on due notice.

**(2)** A person entitled to notice under subsection (1) may, at any time within 10 days after becoming aware of any decision or order, or within any further time the Commission may allow, apply to the Commission to vary or rescind the decision or order, and the Commission shall, on that application and on any notice to the other interested parties that in its discretion it thinks desirable, hear the application, and either confirm, vary or rescind the decision or order or dismiss the application as it considers just.

**Enforcement orders**

**25** An order of the Commission may be enforced by a written direction addressed to a civil enforcement agency, endorsed on or annexed to a certified copy of the order and signed by the Commission, and in the case of an order for payment of any money, costs, expenses or penalty, the civil enforcement agency receiving the direction shall levy the amount with its costs and expenses in a similar manner and with the same powers as if the order were a writ of enforcement issued out of the Court of Queen's Bench against the goods of the party to pay.

**Registration of order**

**26(1)** A certified copy of an order of the Commission for payment of any money, costs, expenses or penalty may be registered in any land titles office.

**(2)** An order registered under subsection (1) constitutes a lien and charge on any land or any interest in land that is held by the person ordered to pay an amount referred to in subsection (1) to the same extent and in the same manner as the land would be bound by the registration of a writ of enforcement issued after judgment in the Court of Queen's Bench.

**Assistance by peace officers, etc.**

**27** Sheriffs, deputy sheriffs, civil enforcement bailiffs and peace officers shall, whenever required to do so, give assistance to and comply with the directions of the Commission in the exercise of the jurisdiction of the Commission.

**Proof of Commission orders**

**28(1)** A copy of a notice, order, decision or other document purporting to be issued under the authority of the Commission, certified as a true copy by a solicitor acting on behalf of the Commission, shall be admitted in evidence to prove the notice, order, decision or other document and its contents without any proof of the authority of the person by whom the notice, order, decision or other document purports to be signed and without any proof of the signature or of the authority of the solicitor or of the solicitor's appointment.

(2) A decision or order of the Commission need not show on its face that

- (a) any proceeding was conducted or notice was given, or
- (b) any circumstances necessary to give the Commission jurisdiction to make the decision or order existed.

(3) A copy of any record or other document belonging to or deposited with the Commission certified as a true copy by a solicitor acting on behalf of the Commission or by a person authorized for the purpose by the Commission is admissible in evidence in all proceedings in which the original record or other document would be admissible in evidence.

## **Part 4 Appeals**

### **Appeals from Commission**

**29(1)** Subject to subsection (2), an appeal lies from a decision or order of the Commission to the Court of Appeal on a question of jurisdiction or on a question of law.

(2) An application for leave to appeal must be filed and served within 30 days from the day that the decision or order sought to be appealed from was made, or within a further period of time granted by the judge where, in the opinion of the judge, the circumstances warrant it.

(3) Notice of an application for leave to appeal must be given to the parties affected by the appeal and to the Commission.

(4) If an applicant makes a written request to the Commission for materials for the purpose of the application for leave to appeal, the Commission shall provide the materials requested within 14 days from the date on which the written request is served on the Commission.

(5) An applicant shall not request under subsection (4) the transcript of the hearing, but the Court of Appeal may, on application or on its own motion, if satisfied that the transcript is necessary for the purpose of determining the application for leave to appeal, direct that the Commission provide the transcript within the time provided by the Court.

(6) A decision or order of the Commission takes effect at the time prescribed by the decision or order, and the operation of the decision or order is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.

(7) Notwithstanding subsection (6), where the Commission thinks fit, the Commission may suspend the operation of a decision or order until

- (a) the decision of the court hearing the appeal is rendered or the time for appeal to the Supreme Court of Canada has expired, or
- (b) the appeal has been abandoned.

(8) On leave to appeal being granted by a judge of the Court of Appeal, the appeal shall proceed in accordance with the practice and procedure of the Court of Appeal.

(9) The notice of appeal must be given to the parties affected by the appeal and to the Commission.

(10) Within 30 days from the day that leave to appeal is obtained, the Commission shall forward to the Registrar of the Court of Appeal the transcript and record of the hearing, its findings and reasons for the decision or order.

(11) On the hearing of the appeal,

- (a) no evidence may be admitted other than the evidence that was submitted to the Commission on the making of the decision or order that is being appealed from;
- (b) the Court of Appeal may draw all inferences that are not inconsistent with the facts expressly found by the Commission and that are necessary for determining the question of jurisdiction or of law, as the case may be, and shall certify its opinion to the Commission;
- (c) the Court of Appeal shall proceed to confirm, vacate or give directions to vary the decision or order that is being appealed, and where the Court vacates or gives directions to vary the decision or order, the Court shall refer the matter back to the Commission for further consideration and redetermination.

(12) The Commission is entitled to be represented, by counsel or otherwise, on the argument of an appeal.

(13) Neither the Commission nor any member of the Commission is in any case liable for costs by reason or in respect of an appeal or application.

(14) If a decision or order is vacated or a variation is directed, the matter must be reconsidered and redetermined by the Commission, and the Commission shall vary or rescind its decision or order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada, as the case may be.

#### **Exclusion of judicial review**

**30** Subject to the right of appeal under section 29, every action, order, ruling or decision of the Commission, the Chair or a person exercising the powers or performing the duties of the Commission or the Chair is final and shall not be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made or process entered or proceedings taken in any court, by way of injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain the Commission or the Chair or any of the Commission's proceedings.

## **Part 5 Market Surveillance Administrator**

#### **Interpretation**

**31(1)** In this Part,

- (a) "Balancing Pool" means the Balancing Pool established by the *Electric Utilities Act*;
- (b) "electricity customer" means "customer" as defined in the *Electric Utilities Act*;
- (c) "electricity market" means "market" as defined in the *Electric Utilities Act*;
- (d) "electricity market participant" means a "market participant" as defined in the *Electric Utilities Act*;
- (e) "electricity retailer" means a "retailer" as defined in the *Electric Utilities Act*;

- (f) “Independent System Operator” and “ISO” mean the Independent System Operator established by the *Electric Utilities Act*;
- (g) “natural gas customer” means “customer” as defined in the *Gas Utilities Act*;
- (h) “natural gas market” means any type of market through or under which an offer, purchase, sale, trade or exchange of gas services takes place in relation to the provision of retail gas services, or services provided under a default rate tariff, by a natural gas market participant;
- (i) “natural gas market participant” means
  - (i) a natural gas retailer,
  - (ii) a gas distributor,
  - (iii) a default supply provider, or
  - (iv) an affiliate, as defined in regulations made under the *Gas Utilities Act*, of a natural gas retailer, gas distributor or default supply provider;
- (j) “natural gas retailer” means a “retailer” as defined in the *Gas Utilities Act*.

(2) For the purposes of this Part, the following words and phrases have the meaning given to them by the *Electric Utilities Act*:

- (a) ancillary services;
- (b) electric distribution system;
- (c) electric energy;
- (d) electricity;
- (e) generating unit;
- (f) interconnected electric system;
- (g) owner;
- (h) power purchase arrangement;
- (i) record;

- (j) regulated rate provider;
- (k) retail electricity services.

(3) For the purposes of this Part, the following words and phrases have the meaning given to them by the *Gas Utilities Act*:

- (a) default supply provider;
- (b) gas distributor;
- (c) retail gas services.

(4) For the purposes of this Part, “affiliated retailer”

- (a) when used in respect of the electricity market has the meaning given to it by regulations under the *Electric Utilities Act*, and
- (b) when used in respect of the natural gas market has the meaning given to it by regulations under the *Gas Utilities Act*.

## Division 1 Corporate Organization

### MSA continued, status

**32(1)** The corporation known as the Market Surveillance Administrator established by the *Electric Utilities Act* is continued.

(2) The Market Surveillance Administrator consists of the individual appointed as Market Surveillance Administrator under section 33.

(3) The Market Surveillance Administrator is not a Provincial corporation for the purposes of the *Financial Administration Act*, the *Auditor General Act* or any other enactment.

(4) For the purposes of the *Government Accountability Act*, the Market Surveillance Administrator is not part of the ministry, as defined in that Act, of any Minister of the Government of Alberta.

(5) The Market Surveillance Administrator is not an agent of the Crown.

**Appointment of MSA, remuneration**

**33(1)** The Minister shall appoint as the Market Surveillance Administrator an individual who, in the opinion of the Minister,

- (a) is independent of any person who has a material interest in the Alberta electric or natural gas industry, and
- (b) will enhance the performance of the Market Surveillance Administrator in carrying out its mandate.

**(2)** The individual appointed as Market Surveillance Administrator shall oversee the business and affairs of the Market Surveillance Administrator.

**(3)** The term of office of the individual appointed as Market Surveillance Administrator is not more than 5 years.

**(4)** The individual appointed as Market Surveillance Administrator is eligible to be reappointed for one or more terms not exceeding 5 years each.

**(5)** The individual appointed as Market Surveillance Administrator continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed or a period of 3 months has elapsed, whichever occurs first.

**(6)** The individual appointed as Market Surveillance Administrator may be paid the reasonable remuneration set out in the budget of the Market Surveillance Administrator as approved by the Chair.

**(7)** In carrying out the mandate of the Market Surveillance Administrator, the individual appointed as Market Surveillance Administrator shall

- (a) act honestly, in good faith and in the public interest,
- (b) avoid conflicts of interest, and
- (c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

**Natural person powers**

**34(1)** Subject to this Act and the regulations made under section 59, the Market Surveillance Administrator has the rights, powers and privileges of a natural person.

**(2)** Except when the power to delegate is restricted by this Act or regulations made under section 59, the Market Surveillance Administrator may delegate any power or duty conferred or imposed on it under this or any other enactment

- (a) to any of the officers or employees of the Market Surveillance Administrator, or
- (b) to any other qualified person as the Market Surveillance Administrator considers appropriate.

**(3)** The Market Surveillance Administrator may not delegate the power to approve annual financial statements.

**(4)** The Market Surveillance Administrator may enter into arrangements or agreements with responsible authorities outside Alberta relating to

- (a) the powers and mandate of the Market Surveillance Administrator, or
- (b) the co-operative enforcement of legislation relating to enactments affecting the electric industry or the natural gas industry.

**Auditor**

**35** The Market Surveillance Administrator shall appoint an independent auditor to review and audit its financial statements.

**MSA budget**

**36(1)** The Market Surveillance Administrator shall prepare a budget for each fiscal year, for approval by the Chair, setting out

- (a) the estimated expenditures, costs and expenses of the Market Surveillance Administrator to carry out its mandate, which may include expenditures for capital assets allocated over the expected useful life of the assets, and

(b) its estimated revenues.

(2) The Market Surveillance Administrator may, with the approval of the Chair, amend its budget.

(3) The Market Surveillance Administrator must be managed so that, on an annual basis, no profit or loss results from its operation.

#### **Budget approval**

**37(1)** The budget of the Market Surveillance Administrator or an amendment to the budget has no effect until it has been approved by the Chair.

(2) The Chair

(a) must be satisfied that the Market Surveillance Administrator's budget and any amendment to it is reasonable and will provide the Market Surveillance Administrator with sufficient resources to effectively carry out its mandate,

(b) shall act in a timely way on receipt of a budget or an amendment to it,

(c) may approve the budget or any amendment to it with or without modifications or conditions, and

(d) shall send a copy of the approved budget or any approved amendment to the budget to the Independent System Operator.

(3) Subject to regulations made under section 59(1)(b), on receipt of the approved budget or an approved amendment to the budget of the Market Surveillance Administrator, the Independent System Operator shall pay to the Market Surveillance Administrator the aggregate of the estimated expenditures, costs and expenses less the revenues shown in the budget, in a manner and at a time agreed on by them.

(4) Subject to regulations made under section 59(1)(b), if in respect of any year the Independent System Operator and the Market Surveillance Administrator fail to agree on the manner and timing of paying the amounts referred to in subsection (3), the Independent System Operator shall pay those amounts to the Market Surveillance Administrator in equal monthly instalments.

**Reports**

**38(1)** The Market Surveillance Administrator shall, within 120 days after the end of its fiscal year, provide to the Minister an annual report

- (a) reporting on its activities in the fiscal year, and
- (b) containing its audited financial statements for the fiscal year.

**(2)** After the annual report has been provided to the Minister, the Market Surveillance Administrator shall make it public.

**(3)** The Market Surveillance Administrator shall provide to the Minister any other reports and records relating to its mandate that the Minister requests.

**(4)** The Market Surveillance Administrator may make available to the Minister reports on market events or conditions or other records including reports or records pertaining to the Market Surveillance Administrator's findings and views on matters relating to its mandate.

**(5)** The Market Surveillance Administrator may, subject to regulations and rules made under section 59, make public any reports or records referred to in subsection (3) or (4).

## **Division 2 Mandate of the Market Surveillance Administrator**

**MSA mandate**

**39(1)** Subject to regulations made under section 59(1)(a), the Market Surveillance Administrator has the mandate

- (a) to carry out surveillance in respect of
  - (i) the supply, generation, transmission, distribution, trade, exchange, purchase or sale of electricity, electric energy, electricity services or ancillary services or any aspect of those activities, and
  - (ii) the provision of retail gas services, or services provided under a default rate tariff, to natural gas customers by natural gas market participants, or any aspect of those activities,

- (b) to investigate matters, on its own initiative or on receiving a complaint or referral under section 41, and to undertake activities to address
  - (i) contraventions of the *Electric Utilities Act*, the regulations under that Act, the ISO rules, reliability standards, Part 2.1 of the *Gas Utilities Act* or the regulations under that Act or of decisions, orders or rules of the Commission,
  - (ii) conduct that does not support the fair, efficient and openly competitive operation of the electricity market or the natural gas market, and
  - (iii) any other matters that relate to or affect the structure and performance of the electricity market or the natural gas market,

including negotiating and entering into settlement agreements and bringing matters before the Commission.

**(2)** Without limiting the generality of subsection (1), the Market Surveillance Administrator's mandate

- (a) in respect of the electricity market includes surveillance and, where applicable, investigation and enforcement, in respect of any one or more of the following:
  - (i) the conduct of electricity market participants;
  - (ii) the structure and performance of the electricity market;
  - (iii) the conduct of the Independent System Operator;
  - (iv) the conduct of the Balancing Pool;
  - (v) the conduct of owners of generating units to which power purchase arrangements apply in meeting their obligations to provide the generating capacity set out in those power purchase arrangements;
  - (vi) arrangements, information sharing and decisions relating to electricity market participants exchanging or wishing to exchange electric energy and ancillary services or any aspect of those activities;

- (vii) arrangements, information sharing and decisions relating to electricity market participants providing or wishing to provide retail electricity services to electricity customers, or any aspect of those activities;
  - (viii) the relationship between the owner of an electric distribution system and its affiliated retailers or other retailers, or any aspect of the parties in the relationship;
  - (ix) the relationship between the owner of an electric distribution system and a regulated rate provider or between the regulated rate provider and an affiliated retailer, or any aspect of the parties in the relationship;
  - (x) electricity exchanges on the tie lines connecting the interconnected electric system in Alberta with electric systems outside Alberta;
  - (xi) any other conduct that may be specified in the regulations made under section 59(1)(a) and (f),
- and
- (b) in respect of the natural gas market includes surveillance and, where applicable, investigation and enforcement, in respect of any one or more of the following:
    - (i) the conduct of natural gas market participants;
    - (ii) the structure and performance of the natural gas market;
    - (iii) arrangements, information sharing and decisions relating to natural gas market participants providing or wishing to provide retail gas services, or services provided under a default rate tariff, to customers, or any aspect of those activities;
    - (iv) the relationship between a gas distributor and its affiliated retailers or other retailers, or any aspect of the parties in the relationship;
    - (v) the relationship between a gas distributor and a default supply provider or between a default supply provider and an affiliated retailer, or any aspect of the parties in the relationship;

- (vi) any other conduct that may be specified in the regulations made under section 59(1)(a) and (f).

**(3)** In carrying out its mandate, the Market Surveillance Administrator shall assess whether or not

- (a) the conduct of electricity market participants and natural gas market participants supports the fair, efficient and openly competitive operation of the electricity market or the natural gas market, as the case may be, and
  - (b) the person carrying out the conduct has complied with or is complying with
    - (i) the *Electric Utilities Act*, the regulations under that Act, the ISO rules, reliability standards, market rules and any arrangements entered into under the *Electric Utilities Act* or the regulations under that Act, in the case of an electricity market participant,
    - (ii) the *Gas Utilities Act*, the regulations under that Act, market rules and any arrangements entered into under the *Gas Utilities Act* or the regulations under that Act, in the case of a natural gas market participant, or
    - (iii) a decision, order or rule of the Commission,
- and
- (c) the ISO rules are sufficient to discourage anti-competitive practices in the electric industry and whether or not the ISO rules support the fair, efficient and openly competitive operation of the electricity market.

**(4)** As part of its mandate, the Market Surveillance Administrator may establish guidelines to support the fair, efficient and openly competitive operation of the electricity market and the natural gas market and shall make those guidelines public.

2007 cA-37.2 s39;2009 c44 s1

#### **Duty to act fairly and responsibly**

**40** The Market Surveillance Administrator shall carry out its mandate in a fair and responsible manner.

### **Division 3 Complaints to and Investigations by the Market Surveillance Administrator**

#### **Complaints or referrals to MSA**

**41(1)** Any person may make a complaint or refer a matter to the Market Surveillance Administrator.

**(2)** Without limiting the generality of subsection (1), the Independent System Operator and the Commission may refer a matter to the Market Surveillance Administrator.

**(3)** A complaint under subsection (1) must be in writing and must include

- (a) the name and address of the person making it,
- (b) the particulars of the complaint,
- (c) any information or facts supporting the complaint, and
- (d) the signature of the individual or authorized representative of the person making the complaint.

#### **Investigation and notification**

**42(1)** The Market Surveillance Administrator

- (a) may, on its own initiative, investigate any matter that is within its mandate,
- (b) unless section 43 applies, shall investigate any complaint or referral made to it that the Market Surveillance Administrator is satisfied is within its mandate, and
- (c) may investigate any event that affects the operation of the electricity market or the natural gas market.

**(2)** The Market Surveillance Administrator shall notify the person making a complaint or referral of the results of an investigation conducted in response to the complaint or referral.

**Decision not to investigate or to discontinue investigation**

**43(1)** The Market Surveillance Administrator may decline to investigate a complaint or referral or discontinue an investigation if the Market Surveillance Administrator is satisfied the complaint or referral is frivolous, vexatious or trivial or otherwise does not warrant investigation.

**(2)** The Market Surveillance Administrator shall give written notice of a decision under subsection (1) to the person who made the complaint or referral, giving reasons for it.

**Settlement**

**44(1)** The Market Surveillance Administrator may negotiate a settlement with a person to resolve any matter that relates to the mandate of the Market Surveillance Administrator and may enter into a settlement agreement with the person.

**(2)** The Market Surveillance Administrator shall file a settlement agreement with the Commission for approval under section 51(1)(b).

**(3)** Division 3 of Part 9 of the *Electric Utilities Act* and sections 28.51 to 28.8 of the *Gas Utilities Act* do not apply to a settlement of a matter under this section.

**Notice to another body having jurisdiction**

**45(1)** If after starting an investigation the Market Surveillance Administrator determines that a matter is within the jurisdiction of one or more of

- (a) the Commission,
- (b) the person or persons responsible for administering the *Competition Act* (Canada), or
- (c) another body,

the Market Surveillance Administrator shall notify the appropriate body of the matter and may make available to that body any records in its possession that are relevant to the matter.

**(2)** The Market Surveillance Administrator may

- (a) discontinue an investigation if the matter appears to be within the jurisdiction of another body and in that event shall notify the person who made a complaint or referral of the discontinuance, giving reasons for the decision, or
- (b) continue an investigation
  - (i) for the purpose of carrying out its mandate, or
  - (ii) for the purpose of collaborating with any body notified under subsection (1).

**Right to enter premises, make inquiries and demand documents**

**46(1)** The Market Surveillance Administrator may, for the purpose of carrying out its mandate, do personally, or may authorize one or more of its officers or employees or any other person to do, any or all of the following:

- (a) enter and inspect the premises of an electricity market participant or a natural gas market participant, the Independent System Operator or the Balancing Pool;
- (b) make reasonable inquiries of an employee or former employee of, or a person engaged or formerly engaged under contract by, a person referred to in clause (a) and require information to be provided under oath;
- (c) request the production of records that are or may be relevant;
- (d) temporarily remove records that are or may be relevant;
- (e) make copies of records that are or may be relevant;
- (f) request access to operate or request the operation of any computer system of an electricity market participant or natural gas market participant, the Independent System Operator or the Balancing Pool to search any data or information contained in or available to the system and produce a record from the data.

**(2)** An activity carried out or action taken by or on behalf of the Market Surveillance Administrator under subsection (1) must be carried out or taken at a reasonable time.

- (3) If the Market Surveillance Administrator removes records under subsection (1), the Market Surveillance Administrator may make copies of them and shall return the original records within a reasonable time.
- (4) A person referred to in subsection (1)(a) or (b) shall co-operate reasonably with the Market Surveillance Administrator.
- (5) If the premises referred to in subsection (1)(a) is a dwelling-house, the Market Surveillance Administrator or a person authorized by the Market Surveillance Administrator may not enter that dwelling-house without the consent of the occupant except under the authority of an order under section 47.
- (6) A person acting under the authority of this section shall carry identification in the form determined by the Market Surveillance Administrator and shall present it on request.

**Court order**

- 47(1)** In this section and in sections 49 and 50, “Court” means the Court of Queen’s Bench.
- (2) The Market Surveillance Administrator may apply to the Court by originating notice for an order under subsection (3)
- (a) if any person hinders, obstructs or impedes the Market Surveillance Administrator or refuses to respond to inquiries, produce records or provide access to computer systems in response to a request under section 46(1) or otherwise refuses to co-operate with the Market Surveillance Administrator in the carrying out of its mandate, or
  - (b) if the Market Surveillance Administrator has reason to believe that requesting access to premises or computer systems or requesting the production of records may result in the destruction of evidence.
- (3) If the Court is satisfied that there are reasonable and probable grounds to believe that the provision of responses to inquiries, access to premises or computer systems, the production or removal of records or other relief is necessary for the Market Surveillance Administrator to carry out its mandate, the Court may make any order it considers necessary to assist the Market Surveillance Administrator.

(4) An application for a Court order under this section may be made without notice to any other person unless the Court orders otherwise.

#### **Protection for individuals**

**48(1)** No person shall be excused from complying with an order under section 47(3) on the grounds that the testimony or records might tend to incriminate the person or subject the person to penalty or forfeiture.

(2) A person who testifies or produces records pursuant to an order under section 47(3) has the right to not have any incriminating evidence so given used to incriminate that person in any other proceedings under any other Act or a regulation under any other Act except a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

#### **Return of records**

**49(1)** The Market Surveillance Administrator shall return any records seized under a Court order within 60 days after the conclusion of the investigation that gave rise to the seizure, including any hearing or appeal.

(2) If the person from whom records are seized under a Court order requires the original records to be returned before the end of the time period set out in subsection (1), the person must send a written request to the Market Surveillance Administrator to that effect.

(3) Promptly on receiving a request under subsection (2), the Market Surveillance Administrator shall

- (a) make copies of the requested records, and
- (b) return the originals to the person from whom they were seized.

(4) Copies of original records are admissible in proceedings under this Act or the regulations if they are certified by the Market Surveillance Administrator as being true copies of the original records.

**Claim of solicitor-client privilege**

**50(1)** If the Market Surveillance Administrator is about to examine or seize any record in respect of which the person having possession of the record, or that person's lawyer, claims that solicitor-client privilege exists, the Market Surveillance Administrator shall, without examining or copying the record,

- (a) require the person from whom the record is to be seized to seal the record in an identifiable marked package,
- (b) seize the package containing the record, and
- (c) place the package in the custody of
  - (i) the clerk of the Court, or
  - (ii) a person that the parties agree on.

**(2)** The person claiming privilege must apply to the Court within 7 days of the seizure for an order determining whether the claim of privilege is proper.

**(3)** The person claiming privilege shall serve notice of the application and any supporting material on the person having custody of the package, on the Market Surveillance Administrator and on any other party to the application at least 3 days before the date the application is to be heard.

**(4)** On being served with notice of the application, the person having custody of the package, if not the clerk of the Court, shall promptly deliver the package to the custody of the clerk.

**(5)** In determining the application, the Court may open the package and inspect its contents, after which the Court shall reseal the contents.

**(6)** The Court shall hear the application in private, and if the Court determines

- (a) that the claim of privilege is proper, it shall order that the record be returned immediately to the person from whom it was seized, or
- (b) that the claim of privilege is not proper, it shall order that the record be delivered immediately to the Market Surveillance Administrator.

(7) If the application referred to in subsection (2) is not made within 7 days of the seizure, the package must be immediately released to the Market Surveillance Administrator.

**Request for hearing or other proceeding**

**51(1)** If the Market Surveillance Administrator is satisfied that

- (a) a person
  - (i) has contravened the *Electric Utilities Act*, a regulation under that Act, an ISO rule or a reliability standard,
  - (ii) has contravened Part 2.1 of the *Gas Utilities Act* or the regulations under that Act,
  - (iii) has contravened a decision, order or rule of the Commission, or
  - (iv) has engaged in conduct that does not support the fair, efficient and openly competitive operation of the electricity market or the natural gas market, as the case may be,

or

- (b) any other matter relating to the mandate of the Market Surveillance Administrator should be considered by the Commission,

the Market Surveillance Administrator may give written notice to the Commission.

**(2)** The notice must set out

- (a) a request that a hearing or other proceeding be initiated and the reasons for the request;
- (b) the names of the persons concerned, if applicable;
- (c) reasonable particulars of the contravention, conduct or other matter that is to be presented to the Commission;
- (d) a statement of the order or other relief the Market Surveillance Administrator proposes to request from the Commission;

(e) any other matter specified in the Commission rules.

**(3)** The Market Surveillance Administrator shall serve the notice on any persons named in the notice in accordance with the Commission rules.

2007 cA-37.2 s51;2009 c44 s1

#### **Contravention of ISO rule**

**52(1)** Notwithstanding section 51, where the Market Surveillance Administrator is satisfied that a person has contravened an ISO rule or a reliability standard for which a penalty has been specified by the Commission under subsection (7), the Market Surveillance Administrator may issue a notice of specified penalty to the person in accordance with the rules made under subsection (7).

**(2)** Where

- (a) a person fails to pay a specified penalty in accordance with the notice of specified penalty issued under subsection (1), or
- (b) a person named in the notice of specified penalty disputes the issuing of the notice,

the Market Surveillance Administrator shall give written notice to the Commission requesting a hearing in accordance with section 51.

**(3)** If the person to whom the notice of specified penalty was issued under subsection (1) fails to attend before the Commission, the Commission may conduct the hearing *ex parte*.

**(4)** At the conclusion of its hearing, the Commission may

- (a) rescind the notice of specified penalty issued under subsection (1),
- (b) confirm the specified penalty set out in the notice of specified penalty, or
- (c) impose an administrative penalty on the person in accordance with section 63.

**(5)** A notice of specified penalty confirmed by the Commission under subsection (4)(b) may be filed with the Court of Queen's

Bench in the same manner and with the same effect as a certificate in respect of an administrative penalty under section 67.

(6) A specified penalty paid to the Commission under this section shall be paid into the General Revenue Fund.

(7) The Commission may make rules

- (a) prescribing the form and contents of notices of specified penalty for the purposes of this section;
- (b) prescribing contraventions of ISO rules or reliability standards in respect of which a specified penalty may be imposed and prescribing the amounts, up to a maximum of \$100 000 per day, or the manner of determining the amounts, of the specified penalties that may be imposed;
- (c) prescribing limitation periods for the giving of notices of specified penalty.

2007 cA-37.2 s52;2009 c44 s1

#### **Hearing or other proceeding**

**53** On receiving a notice from the Market Surveillance Administrator, the Commission shall hold a hearing or other proceeding into the matters set out in the Market Surveillance Administrator's notice, which matters may be amended with the consent of the Commission.

#### **Consent orders**

**54** If the Market Surveillance Administrator and the person named in a notice agree on a means to resolve all or part of a matter before the Commission, they may request the Commission to issue a consent order in respect of the matter or part of the matter.

#### **Amendment or termination of proceedings**

**55(1)** If the Commission finds that a matter that is the subject of its proceedings has been appropriately investigated, heard or dealt with in whole or in part by another body, the Commission may amend or terminate all or part of the proceedings.

(2) The Commission may amend or terminate proceedings at the request of a party to the proceedings with reasons.

**Decision of Commission**

**56(1)** Within 90 days after the conclusion of a hearing or other proceeding, the Commission shall make a decision.

**(2)** In making a decision, the Commission may take into consideration any guidelines made by the Market Surveillance Administrator under section 39(4).

**(3)** The Commission may make an order

- (a) if it is of the opinion that a person
  - (i) has contravened the *Electric Utilities Act*, a regulation under that Act, an ISO rule or a reliability standard,
  - (ii) has contravened the *Gas Utilities Act* or the regulations under that Act,
  - (iii) has contravened a decision, order or rule of the Commission, or
  - (iv) has engaged in conduct that does not support the fair, efficient and openly competitive operation of the electricity market or the natural gas market,

or

- (b) in respect of a matter that the Market Surveillance Administrator has brought before the Commission under section 51(1)(b).

**(4)** The Commission may

- (a) in respect of a person referred to in subsection (3)(a), by order do any or all of the following:
  - (i) impose an administrative penalty on the person under section 63;
  - (ii) impose any terms and conditions the Commission considers appropriate on the person relating to the person's future conduct in the electricity market or the natural gas market;
  - (iii) prohibit the person from engaging in conduct specified in the order or direct the person to take action specified in the order;

(b) provide direction or make any order it considers appropriate in respect of a matter referred to in subsection (3)(b).

(5) When making an order the Commission may take into consideration any failure or refusal of a person to co-operate with the Market Surveillance Administrator.

2007 cA-37.2 s56;2009 c44 s1

## **Division 4 Regulatory Forbearance, Complaints to the Commission and Regulations**

### **Regulatory forbearance**

**57(1)** The Market Surveillance Administrator may decide to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the carrying out of any part of its mandate if the Market Surveillance Administrator finds as a question of fact that a person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

(2) The Market Surveillance Administrator shall not refrain under subsection (1) in relation to a person, product, class of products, service or class of services if the Market Surveillance Administrator finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuation of a competitive market for that person, product, class of products, service or class of services.

### **Complaints about MSA**

**58(1)** Any person may make a written complaint to the Commission about the conduct of the Market Surveillance Administrator.

(2) The Commission

(a) shall dismiss the complaint if the Commission is satisfied that it relates to a matter the substance of which is before or has been dealt with by the Commission or any other body,  
or

- (b) may dismiss the complaint if the Commission is satisfied that the complaint is frivolous, vexatious or trivial or otherwise does not warrant an investigation or a hearing.
- (3) The Commission may, in considering a complaint, do one or more of the following:
- (a) dismiss all or part of the complaint;
  - (b) direct the Market Surveillance Administrator to change its conduct in relation to a matter that is the subject of the complaint;
  - (c) direct the Market Surveillance Administrator to refrain from the conduct that is the subject of the complaint.
- (4) A decision of the Commission under subsection (2) or (3) is final and may not be appealed under section 29.

### Regulations

- 59(1)** The Minister may make regulations
- (a) adding to, clarifying, limiting or restricting any of the Market Surveillance Administrator's powers and mandate or regulating how the powers are to be exercised and the mandate is to be carried out;
  - (b) respecting payment of a portion of the budget of the Market Surveillance Administrator by persons other than the Independent System Operator and respecting who is to make all or part of the payment;
  - (c) authorizing the Market Surveillance Administrator, with or without conditions, to appoint officials from another jurisdiction as officers of the Market Surveillance Administrator under this Act, and authorizing disclosure of information held by the Market Surveillance Administrator to authorities in other jurisdictions, with or without conditions;
  - (d) respecting the records, reports or other information to be provided to the Market Surveillance Administrator by electricity market participants and natural gas market participants, the Independent System Operator and the Balancing Pool, the use that the Market Surveillance

Administrator may make of the records, reports or information, and limitations on that use;

- (e) respecting the publication, disclosure and confidentiality of records created by, viewed by, provided to or obtained by the Market Surveillance Administrator and the right of the public to have access to all or any of them;
- (f) respecting conduct or any other matter relating to or that supports the fair, efficient and openly competitive operation of the electricity market or natural gas market, including approaches or measures to mitigate market power.

(2) The Commission may make rules that are not inconsistent with regulations made under subsection (1) respecting the publication, disclosure and confidentiality of records and reports provided to or created by the Market Surveillance Administrator.

## **Division 5 Liability**

### **Definition**

**60** In this Division, “affiliate” has the meaning given to it in the *Business Corporations Act*.

### **Liability protection of MSA**

**61(1)** In this section,

- (a) “direct loss or damage” does not include loss of profits, loss of revenue, loss of production, loss of earnings, loss of contract or any other indirect, special or consequential loss or damage whatsoever arising out of or in any way connected with a market surveillance act;
- (b) “market surveillance act” means any act or omission carried out or purportedly carried out by a market surveillance person in exercising its powers and carrying out the mandate of the Market Surveillance Administrator under this Act, the regulations and any other enactment;
- (c) “market surveillance person” means
  - (i) the Market Surveillance Administrator,

- (ii) the individual appointed as Market Surveillance Administrator,
- (iii) each officer and employee of the Market Surveillance Administrator,
- (iv) each agent or contractor of the Market Surveillance Administrator, and
- (v) each affiliate of a person referred to in subclause (iv).

(2) No action lies against a market surveillance person, and a market surveillance person is not liable, for a market surveillance act.

(3) Subsection (2) does not apply

- (a) where a market surveillance act is carried out by a market surveillance person that is not an individual, if the act is not carried out in good faith or is a breach of contract, or
- (b) where a market surveillance act is carried out by a market surveillance person who is an individual, if the act is not carried out in good faith.

(4) Where, as a result of the operation of subsection (3), a market surveillance person is liable to another person for a market surveillance act, the market surveillance person is liable only for direct loss or damage suffered or incurred by that other person.

(5) In addition to any other indemnity the Market Surveillance Administrator may provide, where

- (a) a legal action has been commenced against a market surveillance person for a market surveillance act, and
- (b) the market surveillance person is, as a result of the operation of subsection (2) or otherwise, not liable,

the Market Surveillance Administrator shall indemnify that market surveillance person for, and pay to or on behalf of that market surveillance person, all of that market surveillance person's costs of defending the legal action, including all reasonable legal expenses and legal fees on a solicitor and client basis, and the amounts so paid to or on behalf of that market surveillance person are recoverable by the Market Surveillance Administrator in accordance with subsection (6).

(6) Amounts paid to or on behalf of a market surveillance person under subsection (5) may be recovered by the Market Surveillance Administrator from the Independent System Operator through an approved budget or an approved amended budget under section 37(3).

### **Regulations**

**62** The Lieutenant Governor in Council may make regulations

- (a) protecting any person named in the regulations from the legal liability specified in the regulations in the circumstances and in the manner described in the regulations;
- (b) prohibiting, limiting or restricting any cause of action for the purposes of clause (a);
- (c) requiring a person named or described in the regulations to indemnify any other person named or described in the regulations to the extent and in the circumstances described in the regulations;
- (d) providing immunity from a legal action described in the regulations for persons named or described in the regulations in respect of acts or omissions described in the regulations;
- (e) limiting or restricting the nature of damages or loss that a person named or described in the regulations may recover in action from any other person named or described in the regulations.

## **Part 6 Administrative Penalties and Offences**

### **Administrative penalties**

**63(1)** If the Commission, after a hearing or other proceeding, determines that a person has contravened or failed to comply with any provision of this Act or any other enactment under the jurisdiction of the Commission, any decision or order of the Commission or any Commission rule, ISO rule or reliability

standard, the Commission may by order do either or both of the following:

- (a) impose an administrative penalty on that person;
- (b) impose any terms or conditions on that person that the Commission considers appropriate.

(2) An administrative penalty imposed under subsection (1) may require the person to whom it is directed to pay either or both of the following:

- (a) an amount not exceeding \$1 000 000 for each day or part of a day on which the contravention occurs or continues;
- (b) a one-time amount to address economic benefit where the Commission is of the opinion that the person has derived an economic benefit directly or indirectly as a result of the contravention.

(3) The terms and conditions referred to in subsection (1)(b) may include, but are not limited to, prohibiting the person from engaging in conduct specified in the order or directing the person to take action specified in the order.

(4) A person who pays an administrative penalty in respect of a contravention may not be charged under this Act or any other enactment with an offence in respect of that contravention.

(5) An administrative penalty paid to the Commission under this section or pursuant to section 67 shall be paid into the General Revenue Fund.

2007 cA-37.2 s63;2009 c44 s1

### Offences

**64(1)** A person who fails to comply with an order of the Commission made under this Act or any other enactment is guilty of an offence.

(2) A person who fails to comply with this Act or the regulations or a Commission rule, an ISO rule or a reliability standard is guilty of an offence.

(3) A person who advises, solicits, persuades, instructs, directs or orders a person

- (a) to do an act or thing prohibited by this Act or the regulations or a Commission order or rule, an ISO rule or a reliability standard, or
- (b) to omit to do an act or thing required to be done by this Act or the regulations or a Commission order or rule, an ISO rule or a reliability standard

is guilty of an offence.

**(4)** A person who is guilty of an offence under this section is liable to a fine not exceeding \$3 000 000 for each day or part of a day on which the offence occurs or continues.

**(5)** Where a person is convicted of an offence under this section and the court is satisfied that as a result of the commission of the offence the person derived an economic benefit directly or indirectly, the court may order the person to pay, in addition to a fine under subsection (4), a fine in an amount equal to the court's estimate of the amount of the economic benefit.

2007 cA-37.2 s64;2009 c44 s1

#### **Limitation period**

**65** An administrative penalty may not be imposed nor may a prosecution be commenced after

- (a) 3 years from the date that the facts that constitute the alleged offence become known to the Commission, or
- (b) 6 years from the date of the occurrence of the alleged offence,

whichever occurs first.

#### **Investigation costs**

**66** If, in respect of a person whose affairs were the subject of an investigation, the Commission is satisfied that the person has not complied with, or is not complying with, this Act or the regulations or any other enactment within the jurisdiction of the Commission or any order, decision of the Commission, Commission rule, ISO rule or reliability standard, the Commission may, after conducting a hearing or other proceeding, order the person to pay the costs of the investigation and the hearing or other proceeding, subject to the rules under section 76(1)(h).

2007 cA-37.2 s66;2009 c44 s1

**Enforcement of payment of penalties and costs**

**67(1)** Subject to the right to appeal the imposition of an administrative penalty under section 63 or costs under section 66, the Chair may prepare and file with the clerk of the Court of Queen's Bench a certificate certifying the amount that the person is required to pay under section 63 or 66, as the case may be.

**(2)** A certificate filed under subsection (1) with the clerk of the Court of Queen's Bench has the same force and effect as if it were a judgment of the Court of Queen's Bench for the recovery of debt in the amount specified in the certificate together with costs of filing.

## **Part 7 Administration**

**Personnel**

**68(1)** The Commission may

- (a) employ persons as the Commission considers necessary for the transaction of its business,
- (b) prescribe the duties, conditions of employment and remuneration of persons employed by it, and
- (c) from time to time engage the services of experts or persons having special technical or other knowledge to assist in carrying out the Commission's powers, duties and functions.

**(2)** The *Public Service Act* does not apply to the Commission or to the Commission's employees or persons providing services to the Commission.

**Protection from action**

**69** No action or proceeding in respect of any act or thing done or omitted to be done or purported to be done or omitted to be done in good faith under this or any other enactment or under a decision, order or direction of the Commission may be brought against the Commission, any member or any person referred to in section 68(1).

**Administration fee**

**70(1)** In this section, “administration fee” means the amount or amounts imposed as an administration fee under this section.

**(2)** The Commission may, in accordance with the rules under subsection (7), impose an administration fee sufficient to pay for the Commission’s estimated net expenditures associated with carrying out its powers, duties and functions for a fiscal year.

**(3)** In determining the estimated net expenditures under subsection (2), the Commission shall take into account any funds that may be voted by the Legislature for payment to the Commission.

**(4)** The administration fee may be imposed on an owner of a utility or any other person over whom the Commission has jurisdiction or any person to whom the Commission provides services.

**(5)** If an administration fee is imposed on an owner or person by the Commission, the owner or person shall pay the amount of the administration fee to the Commission in accordance with the rules under subsection (7).

**(6)** An amount paid by a person as an administration fee under this section is deemed to be a cost to that person for the purposes of the *Public Utilities Act*.

**(7)** The Commission may make rules

- (a) respecting the determination and calculation of an administration fee;
- (b) respecting the payment of administration fees;
- (c) respecting the owner or person or class of owner or person on whom fees may be imposed;
- (d) respecting the exemption of any owner or person or any class of owner or person from the imposition of an administration fee;
- (e) providing for the imposition and payment of penalties for the late payment of administration fees;
- (f) respecting appeals with respect to the determination or imposition of administration fees.

**Interest and penalties**

**71(1)** A person or owner who does not pay an administration fee in accordance with the Commission order imposing that administration fee at the time and in the manner set out in the order shall pay interest at the rate set by the Commission on all or any part of the administration fee unpaid from the date on which the administration fee should have been paid to the date on which it is received in full by the Commission.

**(2)** The Commission by order may impose on a person, in addition to any penalty payable under section 70(7)(e) and interest payable under subsection (1), a penalty of \$1000 for each day on which all or any part of an administration fee imposed on the person is not paid in accordance with the order of the Commission.

**Appeal**

**72(1)** A person or owner who is required to pay an administration fee under section 70 may appeal the administration fee on the grounds and in accordance with the rules made under section 70(7)(f), and a decision confirming or varying an administration fee is deemed to be an order of the Commission imposing the payment of an administration fee, interest or a penalty under section 70 or 71, as the case may be.

**(2)** Section 29 does not apply with respect to an appeal under this section.

**Power to borrow**

**73** The Commission may borrow from time to time any amounts that are required for the defrayal of the current expenditures of the Commission on the security of the administration fees for the time being uncollected.

**Guarantee and advances**

**74** The Lieutenant Governor in Council may authorize and empower the Minister of Finance to do either or both of the following:

- (a) to guarantee on behalf of the Government the due payment of any money borrowed pursuant to section 73, together with the interest on the money borrowed, on any terms and

conditions that may be prescribed by the Lieutenant Governor in Council;

- (b) to advance to the Commission from time to time out of the General Revenue Fund any sums that the Minister of Finance considers advisable, on any security, at a rate of interest and on any terms and conditions that may be prescribed by the Lieutenant Governor in Council.

## **Part 8 Regulations and Rules**

### **Regulations**

**75** The Lieutenant Governor in Council may make regulations

- (a) adding to, clarifying, limiting or restricting any of the Commission's powers, duties and functions, or regulating how they are to be exercised;
- (b) defining any word or expression used but not defined in this Act;
- (c) prohibiting the delegation of any powers, duties and functions of the Commission under section 8(7).

### **Commission rules**

**76(1)** The Commission may make rules governing any matter or person within its jurisdiction, including

- (a) the procedures and processes applicable to locating, building, constructing and operating facilities or infrastructure over which the Commission has jurisdiction,
- (b) when and how sufficient notice is given where the Commission receives an application relating to the development of facilities or infrastructure,
- (c) appropriate levels, amounts or other criteria that may be used to determine when abbreviated needs identification documents for transmission facility projects will be used under the *Electric Utilities Act* and associated regulations under that Act,

- (d) the procedures and processes for establishing terms and conditions of service and rates of water utilities,
- (e) rules of practice governing the Commission's procedure and hearings,
- (f) any matter necessary for the administration of the system of administrative penalties under section 63,
- (g) the requirements that must be met by an applicant to satisfy the Commission under section 9(3)(b) that a hearing is not necessary,
- (h) respecting the costs of an investigation under section 66, and
- (i) respecting compliance with and enforcement of ALSA regional plans.

(2) A rule may adopt or incorporate in whole or in part or with modifications documents that set out standards, practices, codes, objectives, methods or other rules of any government, organization or person, including, without limitation, any standards, practices, codes of practice, guidelines, objectives or methods developed by the Commission under section 77, as they read at a particular time, or as amended or replaced from time to time, relating to any matter in respect of which a rule may be made under this section.

(3) Where a standard, practice, code, guideline, objective, method or other rule is adopted or incorporated under this section, the Commission shall ensure that a copy of the standard, practice, code, guideline, objective, method or other rule is made available to a person on request.

(4) The Commission is not required to hold a hearing before making a rule.

(5) The *Regulations Act* does not apply to Commission rules.

2007 cA-37.2 s76;2009 cA-26.8 s72

#### **Codes of practice**

**77** The Commission may develop standards, practices, codes of practice, guidelines, objectives or methods relating to any matter in respect of which a rule may be made under section 76.

**Regulations regarding security**

**78(1)** In this section, “terrorist activity” means terrorist activity within the meaning of the *Criminal Code* (Canada).

**(2)** For the purposes of addressing security in respect of terrorist activity or the threat of terrorist activity, the Commission may make regulations

- (a) respecting the shutting down of a gas utility pipeline, hydro development, power plant, transmission line or electric distribution system;
- (b) respecting security measures to be taken in respect of a gas utility pipeline, hydro development, power plant, transmission line or electric distribution system;
- (c) respecting access to information filed with the Commission in respect of a gas utility pipeline, hydro development, power plant, transmission line or electric distribution system.

**(3)** A regulation made under subsection (2) is of no force or effect unless it is approved by the Lieutenant Governor in Council.

**(4)** A regulation made under subsection (2)(c) prevails despite the *Freedom of Information and Protection of Privacy Act*.

**Regulations**

**79(1)** The Lieutenant Governor in Council may make regulations in respect of matters coming under this Act that the Minister considers are not provided for or are insufficiently provided for in this Act.

**(2)** A regulation made under subsection (1) is repealed on the earliest of the following:

- (a) the coming into force of an amendment to a statute that provides for the matter dealt with in the regulation;
- (b) the coming into force of a regulation that repeals the regulation made under subsection (1);
- (c) the expiration of 5 years from the day that the regulation made under subsection (1) comes into force.

(3) The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, incurred or acquired under the authority of that regulation before the repeal of that regulation.

(4) A regulation shall not be made under subsection (1) after the expiration of 5 years from the day that this section comes into force, but any regulation made under subsection (1) that is in force on the expiration of the 5-year period remains in force until it is repealed under subsection (2).

(5) A regulation shall not be made under subsection (1) altering the provisions of subsection (2) or extending the 5-year period provided for in subsection (4).

## **Part 9**

### **Transitional Provisions, Related and Consequential Amendments, Repeal and Coming into Force**

#### **Transitional provisions**

**80(1)** In this section,

- (a) “former Act” means
  - (i) the *Alberta Energy and Utilities Board Act*, or
  - (ii) Part 1 of the *Public Utilities Board Act*;
- (b) “Board” means the Alberta Energy and Utilities Board established under the *Alberta Energy and Utilities Board Act*.

(2) On the coming into force of this section, any approval, order, direction or other determination and any instrument made by the Board before the coming into force of this section continue to have effect according to their terms until they expire or are amended or terminated by the Commission or the Energy Resources Conservation Board under this Act or any other enactment.

(3) Any proceeding of the Board for which a notice of hearing has been issued and which has not been completed before the coming into force of this section shall be completed by the Board as if the *Alberta Energy and Utilities Board Act* had not been repealed.

- (4) A review or an appeal commenced on or after the day this section comes into force in respect of an order or decision of the Board under an Act or a former Act that deals with matters that on the coming into force of this section
- (a) are subject to the jurisdiction of the Commission shall be dealt with by the Commission, and
  - (b) are subject to the jurisdiction of the Energy Resources Conservation Board shall be dealt with by the Energy Resources Conservation Board.
- (5) On the coming into force of this section, the persons serving as members of the Board continue as members of the Board for the purposes of subsection (3), but unless otherwise appointed or reappointed do not become members of the Alberta Utilities Commission or continue as members of the Energy Resources Conservation Board.
- (6) On the coming into force of this section, the following applies:
- (a) the property, assets, rights and benefits of the Board are the property, assets, rights and benefits of the Commission or the Energy Resources Conservation Board, as determined by the regulations;
  - (b) the Commission or the Energy Resources Conservation Board, as determined by the regulations, is liable for the obligations and liabilities of the Board;
  - (c) an existing cause of action, claim or liability to prosecution of, by or against the Board is unaffected by the coming into force of this section and may be continued by or against the Commission or the Energy Resources Conservation Board, as determined by the regulations;
  - (d) a civil, criminal or administrative action or proceeding pending by or against the Board may be continued by or against the Commission or the Energy Resources Conservation Board, as determined by the regulations;
  - (e) a ruling, order or judgment in favour of or against the Board may be enforced by or against the Commission or the Energy Resources Conservation Board, as determined by the regulations.
- (7) The Lieutenant Governor in Council may make regulations

- (a) governing the transition of any of the powers, duties and functions previously carried out by the Board and clarifying, specifying or directing how they will be allocated between the Commission and the Energy Resources Conservation Board;
  - (b) respecting the transfer of property, assets, rights and benefits of the Board to the Commission or the Energy Resources Conservation Board;
  - (c) respecting the transfer of the obligations and liabilities of the Board to the Commission or the Energy Resources Conservation Board;
  - (d) determining by or against which body, the Commission or the Energy Resources Conservation Board, any existing cause of action, claim or liability to prosecution of, by or against the Board shall be continued;
  - (e) determining by or against which body, the Commission or the Energy Resources Conservation Board, any civil, criminal or administrative action or proceeding pending by or against the Board shall be continued;
  - (f) determining in favour of or against which body, the Commission or the Energy Resources Conservation Board, any ruling, order or judgment in favour of or against the Board shall be enforced;
  - (g) respecting the transition to this Act of anything under an Act or a former Act, including the interpretation of any transitional provision in this Act;
  - (h) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the transition to this Act from an Act or a former Act.
- (8)** A regulation made under subsection (7) may be made retroactive to the extent set out in the regulation.
- (9)** If there is a conflict between a regulation made under subsection (7) and a provision in this Part, the regulation prevails.
- (10)** A regulation made under subsection (7)(a), (g) or (h) is repealed on the earliest of

- (a) the coming into force of an amendment that adds the subject-matter of the regulation to this or any other Act,
- (b) the coming into force of a regulation that repeals the regulation made under subsection (7)(a), (g) or (h), and
- (c) 5 years after the regulation comes into force.

**(11)** The repeal of a regulation under subsection (10)(b) or (c) does not affect anything done, incurred or acquired under the authority of the regulation before the repeal of the regulation.

**(12)** A regulation shall not be made under subsection (7)(a), (g) or (h) after the expiration of 5 years from the day that this section comes into force, but any regulation made under subsection (7)(a), (g) or (h) that is in force on the expiration of that 5-year period remains in force until it is repealed under subsection (10).

**(13)** A regulation shall not be made under subsection (7) altering the provisions of subsection (10) or extending the 5-year period provided for under subsection (12).

#### **Consequential amendments to regulations**

**81(1)** The Lieutenant Governor in Council may make regulations for the purpose of

- (a) amending references in regulations to the Alberta Energy and Utilities Board, the Energy Resources Conservation Board and the Public Utilities Board, or
- (b) adding references to the Alberta Utilities Commission or the Energy Resources Conservation Board

in consequence of the enactment of this Act.

**(2)** An amendment under subsection (1) may be made even if the regulation being amended was made by a member of the Executive Council or some other body or person.

**82** *(This section amends other Acts; the amendments have been incorporated into those Acts.)*

**Repeal**

**83** The *Alberta Energy and Utilities Board Act*, RSA 2000 cA-17, is repealed.

**Coming into force**

**84(1)** This Act comes into force on Proclamation.

**(2)** On the coming into force of section 82(14)(c)(ii), section 82(14)(c)(ii) is deemed to have come into force on June 1, 2003.

*(NOTE: Proclaimed in force January 1, 2008.)*