

(no amdt)

ALBERTA REGULATION 158/2003
Electric Utilities Act
BALANCING POOL REGULATION

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Interpretation

1 In this Regulation,

- (a) “Act” means the *Electric Utilities Act*;
- (b) “arrangement” means a power purchase arrangement;
- (c) “derivatives”, in respect of an arrangement, means the rights, entitlements, interests, terms, conditions and obligations forming part of or derived from the arrangement that the Balancing Pool authorizes to be exercised by or grants or assigns to a buyer of the derivative, and includes a transaction, contract or agreement relating to those rights, entitlements, interests, terms, conditions and obligations, but does not include a transfer of the arrangement in whole to the buyer of the derivative;
- (d) “extraordinary event” means
 - (i) an event, other than the termination of an arrangement, in respect of which the arrangement provides for a payment to or by the Balancing Pool, or
 - (ii) an event that results in

- (A) the termination of an arrangement in accordance with its terms and conditions, and
 - (B) the Balancing Pool becoming a party to the arrangement;
- (e) “party”, in respect of an arrangement, means
- (i) the owner of the generating unit to which the arrangement applies,
 - (ii) the buyer of the arrangement,
 - (iii) the Balancing Pool, where the arrangement is held by the Balancing Pool in the capacity of buyer pursuant to the Act, or
 - (iv) a successor to the person referred to in subclause (i), (ii) or (iii).

Powers and duties

2(1) The Balancing Pool must carry out the following powers and duties in accordance with the Act, the regulations and any arrangement:

- (a) oversee the payment into the balancing pool accounts of the amounts referred to in section 4;
- (b) oversee the payment out of the balancing pool accounts of the amounts referred to in section 5;
- (c) offer for sale an arrangement held by the Balancing Pool as a party to the arrangement;
- (d) create and offer for sale derivatives in respect of arrangements held by the Balancing Pool and enter into financial and other transactions and agreements relating to those derivatives, arrangements and the Balancing Pool;
- (e) exercise any powers and perform any duties that accrue to the Balancing Pool as a party to an arrangement or to the Balancing Pool under an arrangement;
- (f) exercise, authorize a third party to exercise or grant or assign to a third party any right, entitlement, interest, term, condition or obligation that arises as a result of the Balancing Pool being a party to an arrangement;
- (g) on receipt of notice in respect of an extraordinary event from a party to an arrangement or otherwise,

- (i) conduct any investigation the Balancing Pool determines appropriate, and
 - (ii) participate to the extent determined appropriate by the Balancing Pool in any dispute resolution process between parties to the arrangement;
- (h) when clause (g) applies,
- (i) agree with the parties to the arrangement that the extraordinary event has occurred and that there is a need for a payment to be made to or by the Balancing Pool, or
 - (ii) assess and verify the occurrence of the extraordinary event and the need for any payment to be made by or to a party under the provisions of the arrangement, and participate in any dispute resolution proceedings under an arrangement pursuant to subsection (2);
- (i) on receipt of notice under clause (g), begin making payments as set out in an arrangement until all matters arising pursuant to clauses (g) and (h) are agreed to or resolved;
- (j) make, defend, settle and withdraw claims and counterclaims against the Balancing Pool relating to an arrangement that the Balancing Pool holds as a party to the arrangement;
- (k) carry out any other powers or duties that are necessary for the administration and operation of the Balancing Pool.
- (2)** Notwithstanding the provisions of an arrangement, if
- (a) a party to the arrangement disputes a determination by the Balancing pool under subsection (1)(h)(ii), or
 - (b) the Balancing Pool disputes that an extraordinary event has occurred or that a payment to or by the Balancing Pool should be made under the provisions of the arrangement,

the dispute must be resolved by the dispute resolution process set out in the arrangement.

(3) Any payments or reimbursements required to be made resulting from the matters arising pursuant to subsection (1)(g) or (h) are payable on and from the date specified in the document setting out the agreement or resolution in respect of the matters, together with

interest on those amounts at the default interest rate set out in the arrangement, running from that date until the amounts are paid.

(4) The amounts of payments and reimbursements referred to in subsection (3) must be shown in a separate billing among the parties.

Derivative provisions

3(1) If the Balancing Pool creates derivatives pursuant to section 2(1)(d), the Balancing Pool may provide confidential information referred to in an arrangement to the buyer or potential buyer of the derivatives, as determined necessary by the Balancing Pool, and enter into, for a period of not less than the term of the derivatives, a confidentiality agreement in respect of that information with the buyer or potential buyer of the derivatives, that contains terms that are, in substance, as restrictive as those in section 20.1 of the arrangement.

(2) No derivative created under section 2(1)(d)

- (a) has the effect of releasing or limiting the rights, obligations and liabilities of the parties to an arrangement, or
- (b) creates any liability or obligation on an owner of a generating unit to which an arrangement applies.

(3) No buyer of a derivative has any action pursuant to the derivative against the owner of a generating unit to which the arrangement in respect of which the derivative is created applies.

(4) The exercise or performance by the buyer of a derivative of any right, entitlement, interest, term, condition or obligation forming part of or derived from an arrangement is deemed to be the exercise or performance by the Balancing Pool under the arrangement.

(5) The buyer or potential buyer of a derivative that enters into a confidentiality agreement referred to in subsection (1) is liable to the owner of a generating unit to which an arrangement in respect of which the derivative is created applies for direct loss and damage resulting from breach of the agreement.

(6) In subsection (5), “direct loss and damage” does not include

- (a) loss of profit,
- (b) loss of revenue,
- (c) loss of production,

- (d) loss of earnings,
- (e) loss of contract, or
- (f) any other indirect, special or consequential loss or damage.

Amounts to be paid into balancing pool accounts

4 The following amounts must be paid into the balancing pool accounts:

- (a) any payment, fee, administrative penalty, charge or other amount that is required by the Act or the regulations to be paid to the Balancing Pool;
- (b) any payment, fee, charge or other amount that is required by an arrangement to be paid to the Balancing Pool, including any payment that is required to be made as a result of the occurrence of an extraordinary event or as the result of the resolution of a dispute referred to in section 2(2);
- (c) any money borrowed for the purpose of meeting the obligations of the Balancing Pool;
- (d) any principal, income, dividend or other amount received in connection with investments made by the Balancing Pool;
- (e) any amount received by the Balancing Pool in respect of an arrangement held by the Balancing Pool as a party to the arrangement;
- (f) any amount received by the Balancing Pool in respect of a derivative, transaction or agreement referred to in section 2(1)(d);
- (g) any other amount received in the course of the administration and operation of the Balancing Pool.

Amounts to be paid out of balancing pool accounts

5(1) The following amounts must be paid out of the balancing pool accounts:

- (a) any payment, fee, administrative penalty, charge or other amount that is required by the Act or the regulations to be paid by the Balancing Pool;

- (b) any payment, fee, charge or other amount that is required by an arrangement to be paid by the Balancing Pool, including any payment that is required to be made as a result of the occurrence of an extraordinary event or as the result of the resolution of a dispute referred to in section 2(2);
 - (c) any principal or interest to be paid or repaid in connection with an amount borrowed for the purpose of meeting the obligations of the Balancing Pool;
 - (d) money payable as the purchase price for investments made by the Balancing Pool;
 - (e) any amount payable by the Balancing Pool in respect of an arrangement held by the Balancing Pool as a party to the arrangement;
 - (f) any amount payable by the Balancing Pool in respect of a derivative, transaction or agreement referred to in section 2(1)(d);
 - (g) any other obligation or expenditure incurred in the course of the administration and operation of the Balancing Pool.
- (2) Nothing in the Act, the regulations or an arrangement is to be construed so as
- (a) to relieve an insurer from its obligations under a policy of insurance, or
 - (b) to require an amount otherwise recoverable under a policy of insurance to be paid by the Balancing Pool.

No change in law**6** Neither

- (a) the enactment or implementation of this Regulation, nor
- (b) the enactment or implementation of an amendment to this Regulation is to be considered a “change in law” as defined in the power purchase arrangements.

Repeal**7** The following regulations are repealed:

- (a) the *Balancing Pool Regulation* (AR 169/99);
- (b) the *Balancing Pool Allocation Regulation* (AR 330/00).

Expiry

8 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on June 30, 2021.

Coming into force

9 This Regulation comes into force on the coming into force of Parts 1 to 10 of the *Electric Utilities Act*.