

Mandate and Roles Document

*As required by the Alberta Public Agencies
Governance Act*

MARKET SURVEILLANCE ADMINISTRATOR

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MARKET SURVEILLANCE ADMINISTRATOR – Mandate and Roles Document

1.0 Preamble

This Mandate and Roles Document was developed collaboratively between the Minister and the Market Surveillance Administrator (MSA). It is intended to satisfy the requirements of the *Alberta Public Agencies Governance Act (APAGA)* and reflect a common understanding of the authority, respective roles, and responsibilities of the parties.

This document is not intended to replace the ongoing dialogue at the staff, Deputy Minister, Administrator, and Ministerial levels that is expected and required to ensure that the MSA and the Government of Alberta (GOA or Government) are operating collaboratively and effectively.

Unless otherwise stated, terms used in this document that are defined in the *APAGA, Interpretation Act*, or the *Alberta Utilities Commission Act (AUCA)* have the same meanings as defined in those Acts.

In this document, the term “Minister” refers to the Minister of Energy and “Department” refers to the Department of Energy, except where otherwise specified. Under the *Government Organization Act* the Minister may delegate powers, duties and functions of the Minister to a person. Wherever the Minister is referred to in this document, the Minister may designate officials to act in the Minister’s place in respect of the power, duty or function for which the reference to the Minister is made.

2.0 Background, Legislation, and Mandate

2.1 Background

The MSA is a corporation continued under and subject to the AUCA. The MSA is a “public agency” within the meaning of the *APAGA (APAGA public agency)*, but is not a Provincial corporation for the purposes of the *Financial Administration Act*, the *Auditor General Act*, or any other enactment.

The MSA interacts with the Department and other Government departments where appropriate in carrying out its legislated mandate. This includes establishing goals that are compatible, efficient, cost effective, clear and consistent with legislation and Government objectives. Within this overarching framework, the MSA manages individual investigations and applications to the Alberta Utilities Commission (Commission).

The governing statutes and regulations in force during the term of this document define the MSA’s mandate and purposes. A list of statutes and regulations of particular application to the MSA are set out below. This list is not exhaustive and may change during the term of this document.

2.2 Legislation

The following statutes and regulations establish and govern the MSA and its purposes:

- *Alberta Public Agencies Governance Act (APAGA)*;
- *Alberta Utilities Commission Act (AUCA)*;
- *Electric Utilities Act (EUA)*;
- *Gas Utilities Act (GUA)*;

- *Hydro and Electric Energy Act;*
- *Public Utilities Act;*
- *Rural Utilities Act;*
- *Small Power Research and Development Act;*
- *Micro-generation Regulation;*
- *Municipal Own-use Generation Regulation;*
- *Fair, Efficient and Open Competition Regulation (FEOC Regulation);*
- *Market Surveillance Regulation (MSR); and*
- *Code of Conduct Regulation.*

2.3 Mandate

The MSA is responsible for acting as an enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta’s wholesale electricity markets and the retail electricity and natural gas markets.

Section 39 of the *AUCA* establishes surveillance and, where applicable, investigation and enforcement as the core mandates of the MSA.

As part of its mandate, the MSA 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. The MSA may also assume an advocacy role by actively promoting competition and market-based solutions to address deficiencies in the structure and performance of the electricity and retail natural gas markets.

The MSA does not have any adjudicative functions as defined in *APAGA*, but does investigate commercially sensitive and confidential matters that may become a part of the Commission’s adjudicative responsibilities.

3.0 Accountabilities

The MSA is accountable to the Minister to ensure that it fulfills its mandate and for carrying out the roles and responsibilities assigned to MSA under the statutes, this document, and applicable GOA policies.

The *AUCA* and the *MSR* set out the manner in which the MSA must carry out its responsibilities, including a duty to act in a fair and responsible manner. The Commission has the authority to consider complaints against the MSA and direct it to change its conduct or refrain from the conduct that is the subject of the complaint.

The *APAGA* sets out some general responsibilities of a *APAGA* public agency. In particular, as a *APAGA* public agency, the MSA shall:

- Make all reasonable efforts to fulfil its mandate;
- Participate with Minister in setting its long term objectives and any short term targets, if any;
- Monitor its activities for the purpose of ensuring that Agency is
 - Acting within its mandate;

- Acting in accordance with any policies set by Minister under section 10 of the APAGA (APAGA Ministerial Policy) and any regulations respecting those policies; and
- Achieving its long-term objectives and any short-term targets;
- Inform the Minister respecting its significant activities and operations and any significant events that may affect those activities or operations; and
- Discharge any other responsibilities set out in the regulations.

The MSA may provide advice or comments in response to a request by the Minister and may volunteer to provide advice or comments to the Minister on any matter respecting the development, establishment, amendment, termination or repeal of any enactment, program, directive, guideline or policy that is related to the MSA's mandate.

4.0 Roles and Responsibilities

4.1 Administrator

The Minister appoints an individual as the the Market Surveillance Administrator (the Administrator) who oversees the business and affairs of the MSA and leads the organization in the execution of its mandate.

The Administrator is the MSA's primary liaison in dealing with the Minister and the Department and is the official spokesperson for the MSA. The Administrator is responsible for keeping the Minister and the Department apprised of significant activities or events in the course of carrying out the MSA's mandate that may attract public attention.

The Administrator will regularly review the MSA's procedural By-laws to keep them up to date and to assess if changes are required to continue operating with principles and practices of good governance and alignment to the existing statutes and regulations.

The Administrator provides leadership to MSA staff. He or she develops the organizational structure of the MSA in consultation with the MSA management team and delegates responsibility for the effective delivery of the different parts of the MSA's mandate and its internal administration to the Deputy Administrator or other employees which includes:

- Carrying out the responsibilities and mandate of the MSA;
- Ensuring a sound governance framework addressing compliance with applicable laws, regulations and GOA policies;
- Ensuring the development of the necessary information, case management and reporting systems in support of the efficient functioning of the MSA;
- Developing internal procedures and controls to support fair and responsible investigative and enforcement activities;
- Ensuring that the Department is provided with regular updates on MSA operations, emergent issues and matters of interest to the Minister.
- Directing the preparation of documents and reports as required including corporate plans, budgets, and business plans;
- Ensuring documentation and controls to support expenditures and keep track of material variances between actual and projected expenditures;

- Managing human resources issues including developing a talent management framework, addressing recruitment of qualified staff, retention, effective performance feedback, training and development and succession planning; and

The Administrator's power to approve annual financial statements must not be delegated.

4.2 Chair, Alberta Utilities Commission

In relation to the MSA, the Chair of the Commission (AUC Chair or Chair) has a distinct role to provide service to the MSA and Minister as set out in the *AUCA* and MSA By-laws, but otherwise has no oversight or other involvement with the MSA. The functions performed by the Chair are:

- Reviews the annual budget of the MSA, including amendments; and
- Sends a copy of the approved budget or any approved amendment to the budget to the Independent System Operator.

In accordance with the *AUCA*, the Chair does not sit on any Commission hearings or other proceedings initiated at the request of the MSA.

The Minister may, as applicable, request the assistance of, or formally delegate certain functions to, the AUC Chair including one or more of the following:

- Assisting the Minister in the recruitment process to identify qualified candidates for appointment as the Administrator;
- Determining the Administrator's remuneration, if not otherwise defined in regulations;
- Once the Minister selects and appoints the Administrator, entering into the contract for services with the Administrator on behalf of the MSA, as authorized by MSA By-laws;
- Annually reviewing the performance of the Administrator in relation to the contract for services, and reporting to the Minister in that regard; and
- Reviewing and approving reasonable business expenses of the Administrator.

4.3 Minister

The Government of Alberta has designated the Minister responsible for the Department to oversee and account for the MSA. The Minister's duties and responsibilities are specified in the *AUCA*, *EUA*, *GUA*, as well as in the *APAGA*.

The *APAGA* sets out some particular responsibilities of the Minister. The Minister, as regards the MSA as a *APAGA* public agency, shall:

- Participate with the MSA in setting the MSA's long-term objectives and its short-term targets, if any;
- Advise the MSA, as the Minister considers appropriate, respecting any GOA policies applicable to the MSA or its activities or operations; and
- Monitor whether the MSA is
 - Acting within its mandate; and
 - Achieving its long-term objectives and short-term targets, if any.

The Minister may:

- Consult with the MSA and request its advice or comments on any matter respecting the development, establishment, amendment, termination or repeal of any enactment, program, directive, guideline or policy that is related to the MSA's mandate; and
- Set APAGA Ministerial Policies that must be followed by the MSA in carrying out its powers, duties and functions.

These and other responsibilities of the Minister in relation to the APAGA are described in more detail elsewhere in this document.

4.4 Deputy Minister

The Deputy Minister of Energy is the deputy head of the Department and acts under the general direction of the Minister to advance the mandate of the Department and the Government. Under section 21 of the *Interpretation Act*, where an enactment directs or empowers the Minister to do something, or otherwise applies to the Minister, this includes the Deputy Minister or a person appointed as acting Deputy Minister, excepting only the authority to enact a regulation as defined in the *Regulations Act*.

The Deputy Minister will coordinate his or her actions and will work with the Administrator, respecting the development and implementation of GOA, Department and MSA policies, priorities, business plans, resources, budget, and other matters of mutual interest.

The Deputy Minister has a supportive role to the Premier, Minister, and Executive Council that includes overseeing the operations and performance of the agencies to ensure they are operating effectively and in accordance with their mandates. This requires the Deputy Minister to be fully aware of what agencies, including the MSA, are doing and how they are doing it, managed through strong working relationships and direct communication with the Administrator.

5.0 Recruitment, Orientation and Training and Evaluation

5.1 Recruitment

The Administrator is recruited through a competitive public search process conducted in compliance with the requirements set out in section 13 of the APAGA.

The recruitment search takes into account the following needs:

- Knowledge of the electricity industry;
- Understanding of how the Government functions;
- Experience in managing people and leading an organization, including the development of corporate policies and procedures;
- Experience in working with stakeholders and managing situations where there are different points of view; and
- Specialized background in law and economics and competition analysis.

The profiles of qualified candidates, along with the documented recruitment process and any additional information required are sent to the Minister for consideration and selection.

5.2 Appointment

The Administrator is appointed according to the criteria listed in section 33 of the *AUCA*, sections 14 and 15 of the *APAGA*, and following GOA procedures for finalizing agency board appointments, which may include obtaining Cabinet approval as necessary.

In accordance with the *AUCA*, section 33(6), as there are no applicable regulations under *APAGA*, the Minister determines the remuneration of the Administrator, and the remuneration to be paid must be set out in the budget of the MSA.

5.3 Term of Office

As set out in the *AUCA*, the Administrator is appointed for a term not to exceed five years. The Administrator may be reappointed for one or more terms not more than five years each. Pursuant to the *APAGA*, the Administrator may not serve for more than 10 consecutive years.

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

5.4 Orientation, Training and Development

The Administrator is responsible for the MSA's talent management framework, addressing recruitment of qualified staff, retention, effective performance feedback, training and development, and succession planning. This includes preparing for the orientation of a new Administrator.

The Administrator will continue to seek improvement to his or her understanding of "good governance" and arrange for or identify useful training opportunities.

The Administrator will ensure that senior members of the staff attend such training sessions.

5.5 Evaluation of the Administrator

The Minister may evaluate the Administrator against any or all of the following:

- Performance standards that may be established under the Administrator's contract for services;
- Delivering on the mandate of the MSA;
- Delivering on the MSA's long term objectives and short term targets, if any, described the MSA's annual plans; and
- The Administrator's leadership objectives.

5.6 Communication with the public

Publication of any recruitment process will be completed in compliance with section 13 of the *APAGA*. Interaction and communication between the Minister and the MSA, and with the public will be discussed elsewhere in this document.

6.0 Code of Conduct

6.1 Duty of Care and Conflicts of Interest

Under section 33(7) of the *AUCA*, the Administrator must, in carrying out the mandate of the MSA, act honestly, in good faith and in the public interest, avoid conflicts of interest, and exercise the care, diligence, and skill that a reasonably prudent person would exercise under comparable circumstances.

The MSA develops process documents as roadmaps that describe how the MSA carries out different parts of its mandate, including the handling of investigations, the making of guidelines and other stakeholder consultations.

The MSA maintains a Code of Conduct, available on the MSA public website, regarding conflicts of interest as well as other ethical matters. Where conflicts, real or perceived may arise, it is each MSA employee's responsibility to offer full disclosure as soon as they become aware of the (potential) conflict. The Administrator, or another person designated to deal with the matter, will assess any real or potential conflict and a decision will be rendered on behalf of the organization as to how any conflict will be resolved.

7.0 Interaction and Communications

7.1 Interaction

The MSA's most common and ongoing interactions with the GOA are with the Department. In general, the Administrator will discuss and agree on these interactions and existing and emerging issues with the Minister (or representative) and/or Deputy Minister, as applicable.

Where there are significant financial, policy, or other issues with implications for the MSA, industry or the GOA, the Administrator will attempt to resolve them through collaboration with the Minister or his or her designate, or the Deputy Minister, as applicable, to ensure shared outcomes are achieved that are consistent, compatible, efficient, cost effective, and clear with legislation and Government objectives.

The requirement for interaction between the Minister and the MSA is not intended to impede the ability of either the GOA or the MSA in timely execution of their respective mandates and taking appropriate action whenever it is required.

Such interactions include:

- Collaboration on development of rules and regulatory instruments to ensure shared outcomes are achieved and regulations are consistent, compatible, efficient, cost effective, and clear;
- Regular contacts between the Administrator and the Minister or Deputy Minister;
- Ongoing collaboration and communication at the staff level;
- Ongoing interactions with their respective operations staff to ensure efficient and effective work processes;
- Annual or semi-annual meetings between the Administrator and the Minister and/or official of the Department;

- Reviewing the MSA’s annual plan with the Minister and participating with the Minister in setting the MSA’s long-term objectives and short-term targets, if any;
- The filing of the annual report with the Minister;
- Advising on key policies which have a significant impact on the MSA’s performance;
- Advising on changes to current policies; and
- Advising on changes to budget and finances.

The MSA and the Department will collaborate and cooperate with each other in the execution of their respective roles, facilitating work through:

- Participating in regular meetings with other electricity agencies chaired by the ADM, quarterly or more frequently, to allow for updates, sharing of annual operating plans, understanding of common concerns, and coordination;
- Collaboration on issues with implications to the MSA, the electric industry or the GOA to ensure shared outcomes, such as agency alignment, are achieved that are consistent, compatible, efficient, cost effective, and clear with legislation and GOA objectives; and
- Ongoing interactions with their respective operations staff to ensure efficient and effective work processes.

7.2 Information Sharing and Advisory Services

The purpose of this document is to ensure that the MSA and the Minister are working together to achieve the goals under APAGA and effectively discharging the MSA’s mandate under the AUCA. This includes a clear recognition that the GOA will determine policy and that, where the MSA has appropriate concerns and wants to engage on policy, there will be joint processes to facilitate input, collaboration, advice and direction.

The MSA manages the enforcement that protects and promotes the fair, efficient and openly competitive operation of Alberta’s wholesale electricity markets and its retail electricity and natural gas markets. The Department, other GOA departments, sector agencies, and the MSA have regular and *ad hoc* needs for information, advice, or expertise from one another in policy or regulatory development and day-to-day operations.

The primary focus of the information, advice, and expertise sharing between the MSA and the Department is:

- Status of the enforcement activities under the MSA’s mandate;
- Collecting and recording timely and useful dissemination of information regarding the efficiency and competitiveness of the wholesale and retail electricity and natural gas markets in Alberta ;
- Discussion and input into GOA policy proposals;
- Analysis of GOA policies and issues which have implications for the MSA, industry, or stakeholders;
- Timely and useful dissemination of information regarding the MSA, and its role in Alberta’s competitive market as appropriate.
- Collecting, recording and assessing information and data on utility and market performance of industry activities; and
- Coordination with Government departments and sector agencies respecting monitoring, evaluation, and reporting.

In addition to complying with information requests made under the *APAGA*, the GOA's requirements for new or *ad hoc* MSA information, advice, and expertise should, where possible, be anticipated and identified in ongoing planning and budget processes to prevent avoidable negative impacts on regular MSA operations.

In circumstances where the Minister requests records or information that are commercially sensitive or may form the basis of an individual investigative or enforcement action, the MSA will inform the Minister of its concerns and offer alternative solutions to assist the Minister for considering his or her request.

Information sharing is necessary for the Minister to discharge his or her duties of oversight and awareness of agency activities, including the activities of the MSA. The timely sharing of information between Government and MSA shall be the norm subject only to statutory exceptions where applicable. The MSA shall collect, maintain, and share information in formats consistent with GOA standards and formats, wherever possible.

7.3 Communications

The Minister and Administrator are accountable for the MSA's effectiveness in fulfilling its mandate and alignment with the objectives of the GOA.

The Minister through his or her delegate and through the efforts of the Department:

- Informs the MSA of GOA policies, legislation and direction affecting MSA operations and responsibilities; and
- Informs the MSA of, and makes available to the public, any APAGA Ministerial Policy that must be followed by the MSA in carrying out its powers, duties and functions.

The Administrator, through the efforts of the MSA staff:

- Provides the Minister with advice on matters requested by the Minister or as the Administrator deems appropriate; and
- Advises the Minister prior to making news releases or other public announcements, to ensure the Department is aware of and prepared for any necessary response.

The Administrator, the Minister, the Deputy Minister, and the Assistant Deputy Minister responsible are committed to the timely exchange of information and effective consultation, where appropriate and necessary, to enable the fulfillment of their respective responsibilities.

The Administrator, the Minister, the Deputy Minister, and the Assistant Deputy Minister responsible will inform and consult with each other directly and through their staff on issues in a timely manner, where appropriate and necessary, to enable the fulfillment of their respective responsibilities. They will communicate frequently to ensure there are no surprises between the Department and the MSA on finances, appointment processes, significant files, and issues.

External communications shall be coordinated, whenever practicable, between the Department's communication staff and MSA staff so that proper planning and review can occur before information is communicated. Communications should be timely, clear, transparent, and constructive.

8.0 Financial and Staffing

8.1 Financial

In accordance with the provisions of the *AUCA*:

- The MSA must prepare a budget for each fiscal year, for approval by the AUC Chair and manage its budget so that on an annual basis, no profit or loss results from its operation;
- The MSA may, with the approval of the AUC Chair, amend its budget;
- The Independent System Operator must pay to the MSA the aggregate of the estimated expenditures, costs and expenses less the revenues shown in the budget and
- The MSA must appoint an independent auditor to review and audit its financial statements. The audited financial statements are made public as part of the annual reporting of the MSA.

8.2 Staffing

The MSA is not subject to the *Public Service Act*.

The Minister expects the MSA's staffing and human resource management systems to reflect prudent fiscal management.

The MSA will regularly review its compensation policies and plans as they affect the management and administration of the MSA.

9.0 Planning and Reporting

Each year the MSA prepares a budget for the approval of the AUC Chair as required in section 36(1) of the *AUCA*.

The MSA will provide its annual report and audited financial statements to the Minister within 120 days after the end of its fiscal year. After providing it to the Minister, the MSA must make the annual report public.

Respecting the Minister's responsibilities identified in section 6 of the *APAGA*, the MSA will share its annual plans with the Minister and participate with the Minister in setting its long-term objectives and short-term targets, if any. These plans should support discussions that include a description of how the MSA intends to address each area of its responsibilities as the enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's:

- Wholesale electricity markets;
- Retail electricity markets; and
- Retail natural gas markets.

THE MSA maintains records of its affairs in accordance with applicable legislation and good business practices.

10.0 Administration

10.1 Review of the Mandate and Roles Document

This Mandate and Roles Document must be reviewed by the Minister and the MSA, and renewed, amended or replaced within three years after the date it is signed.

A review of the MSA's mandate and purpose will be carried out every seven years by the Minister in accordance with the APAGA.

10.2 Transparency

Copies of the MSA Mandate and Roles Document will be available to the public on the MSA public website and on the Agency Governance Secretariat website.

10.3 Signatures

The *Market Surveillance Administrator Mandate and Roles Document* signed this 8 day of APRIL, 2015, is accepted and agreed to by



Minister of Energy



Administrator, Market Surveillance Administrator

