

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 (MRD) 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 to reflect a common understanding of the authority, respective roles and responsibilities of the parties.

This MRD 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) are operating collaboratively and effectively in accordance with their respective mandates.

Unless otherwise stated, terms used in this MRD 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 MRD, 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 Deputy Minister may act or 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. Where there is reference to the Deputy Minister in this MRD then that refers to the Deputy Minister of Energy or the Associate Deputy Minister of Natural Gas and Electricity.

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 (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 GOA departments where appropriate in carrying out its legislated mandate. Within this legislated mandate, 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 MRD 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);*
- *An Act to Cap Regulated Electricity Rates;*
- *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);*
- *Code of Conduct Regulation; and*
- *Reform of Agencies, Boards and Commissions Compensation Act (RABCCA).*

2.3 Mandate

The MSA is an independent market monitoring and enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity market and the retail electricity and natural gas markets. In this context, the MSA has three essential functions:

- Monitor the markets and market participants to ensure all activities, structures, and behaviors are consistent with supporting fair, efficient, and open competition.
- Investigate market participants conduct that shows to be inconsistent with the fair, efficient and openly-competitive operation of the market and take enforcement actions as necessary to address the matters; and
- Report on the results of surveillance, and investigations with recommendations for improvement or enforcement as necessary.

The mandate of the MSA is set out in Section 39 of the AUCA, and related regulations, including the *Market Surveillance Regulation*, which establish 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 markets and the natural gas retail market, and shall make those guidelines public. The MSA actively enforces competitive behavior and looks for activities inconsistent with a fair, efficient and openly competitive operation of the electricity and retail natural gas markets. The MSA may be relied upon to provide expert technical assessments to the AUC in a variety of circumstances, particularly as it relates to effective market functioning. AUC rules permit the MSA to provide input to the development of ISO rules.

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 MRD, and applicable Ministerial policies.

The AUCA, related regulations, and the MRD 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's conduct and direct it to change its conduct or refrain from the conduct that is the subject of the complaint.

The APAGA describes some general responsibilities of an APAGA public agency. In particular, as an APAGA public agency, the MSA shall:

- Make all reasonable efforts to fulfil its mandate;
- Participate with the Minister in setting its long-term objectives and any short term targets, if any;
- Monitor its activities for the purpose of ensuring that it is
 - i. Acting within its mandate;
 - ii. 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
 - iii. 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 APAGA 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 must appoint an individual pursuant to the AUCA as the the Market Surveillance Administrator (Administrator). The Administrator oversees the business and affairs of the MSA and leads the organization on a day to day basis 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 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. The Administrator develops the organizational structure of the MSA in consultation with the MSA management team. The Administrator may delegate responsibility for the effective delivery of the different parts of the MSA's mandate and its internal administration to other employees, which includes:

- Fulfilling the responsibilities and mandate of the MSA;
- Implementing a sound governance framework to ensure compliance with applicable laws, regulations and GOA policies;
- Developing the necessary information, case management and reporting systems to support the efficient and effective functioning of the MSA;
- Developing internal procedures and controls to support objective, fair, and responsible investigative and enforcement activities;
- Ensuring that the Department is provided with regular updates on MSA operations, emergent issues and matters of significant interest to the Minister.
- Directing the preparation of documents and reports as required including corporate plans, budgets, and business plans;
- Ensuring appropriate documentation and controls to support expenditures and keep track of material variances between actual and projected expenditures;
- Managing human resources including developing a talent management framework, and administering recruitment of qualified staff, retention, effective performance feedback, training and development and succession planning; and,
- Ensuring policies and effective systems are in place to verify that travel, meal, and hospitality expenses of employees comply with MSA policies.

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) 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 AUC 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 AUC 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 such as reviewing and approving reasonable business expenses of the Administrator.

4.3 Minister

The GOA has designated the Minister responsible for the Department of Energy 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 shall:

- Participate with the public agency in setting the public agency's long-term objectives and its short-term targets, if any,
- Establish the Mandate and Roles Document
- Advise the public agency, as the Minister considers appropriate, respecting any government policies applicable to the public agency or its activities or operations, and
- Monitor whether the public agency 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.

Other responsibilities of the Minister in relation to the APAGA are described further in this MRD.

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 GOA. 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 Associate Deputy Minister, excepting only the authority to enact a regulation as defined in the *Regulations Act*.

The Deputy Minister will coordinate their 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 public agencies to ensure they are operating effectively and in accordance with their mandates. This requires the Deputy Minister to be fully aware of

what public agencies, including the MSA, are doing and how they are doing it, managed through a strong working relationship and direct communication with the Administrator.

5.0 Recruitment, Orientation and Training and Evaluation

5.1 Recruitment

The Government of Alberta will use a competency-based process for the appointment of members to public agencies. Recruitment processes for Alberta's public agencies are centrally coordinated by the Public Agency Secretariat.

Recruitment of the Administrator is governed by the Alberta Public Agencies Governance Framework for appointments to Alberta's Public Agencies, section 13 of APAGA and GOA procedures for finalizing board appointments, which may include Cabinet review. More specifically, the recruitment search takes into account the any skills, knowledge, experience or attributes required and selection is based on the assessment of the extent to which the person possesses these characteristics:

- In depth knowledge of the electricity industry and the electricity market framework in Alberta;
- Experience conducting market surveillance;
- Experience conducting investigation, compliance, and enforcement activities;
- Professional demeanor able to maintain objectivity while constructing evidence-based cases.
- Excellent communication skills and the ability to effectively distill complex materials into rational messages.
- Understanding of how the Government functions;
- Experience in leading an organization, including providing strategic oversight and decision making;
- Experience in working with stakeholders and managing situations where there are different points of view;
- Knowledge of law, economics and competition analysis; and
- Astute systems thinker who sees the bigger picture.

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 by Ministerial Order, 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.

Remuneration for the Administrator is determined in accordance with the *Reform of Agencies, Boards, and Commissions Compensation Act Regulation*. In accordance with the AUCA, section 33(6), if 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.

As set out in the AUCA, the Administrator continues to hold office after the expiry of their term until they are reappointed, a successor is appointed or a period of three 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 their 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 in the MSA's annual plans; and
- The Administrator's leadership objectives.

6.0 Code of Conduct

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, applicable to all MSA employees, 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) real or perceived 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 MSA 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 and the Minister, Deputy Minister, or designate, as applicable will discuss these interactions and existing and emerging issues.

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, the Deputy Minister, or designate, as applicable, to ensure shared outcomes are achieved that are consistent, compatible, efficient, cost effective, and aligned with legislation and GOA objectives.

The requirement for interaction between the Minister, Deputy Minister, or designate and the Administrator 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 may include the following:

- Collaboration on development of 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, Deputy Minister, or designate ;
- 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;
- 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;
- Minister advising the MSA on key Government policies which may have a significant impact on the MSA's performance;
- Minister advising the MSA on proposed changes to current Government policies which may have a significant impact on the MSA's performance; and
- Minister advising the MSA on changes to Government budget and finances which may have a significant impact on the MSA's performance.

The MSA and the Department will collaborate and cooperate with each other in the execution of their respective roles, where appropriate by, among other things:

- Participating in meetings with other electricity agencies chaired by the Minister or a delegate from the Department quarterly or more frequently, held to allow attendees to provide updates relevant to some or all of the other, proposed industry initiatives,, understanding of concerns and coordination;

- Collaboration on issues with implications to the MSA, the electric industry or the GOA to ensure shared outcomes, such as electricity agency alignment, are achieved that are consistent, compatible, efficient, cost effective, and aligned with legislation and GOA and MSA 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 the MRD is to ensure that the MSA and the Minister are working together to achieve the goals under APAGA and the MSA's mandate under the AUCA. This includes a clear recognition that the GOA will determine GOA policy and that, where the MSA has appropriate concerns and wants to engage on GOA policy, there will be joint processes to facilitate input, collaboration, advice and direction.

The MSA supports, protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity market, 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:

- To provide status of the enforcement activities under the MSA's mandate;
- To collect, record, and report on timely information regarding the efficiency and competitiveness of the wholesale and retail electricity and natural gas markets in Alberta;
- To discuss and provide input into GOA policy proposals;
- To share any market data, insights or analytics where appropriate that may assist in the policy analysis and development of the GOA.
- To provide analysis of GOA policies and issues which have implications for the MSA, industry, or stakeholders;
- To provide timely and useful publication of information regarding the MSA, and its role in Alberta's competitive electricity and natural gas markets, as appropriate.
- To collect, record and assess information and data on utility and market performance; and
- To coordinate with Government departments and sector agencies respecting monitoring, evaluation, and reporting.

In addition to complying with information requests made under the APAGA or AUCA, 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.

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 their 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 pursuant to APAGA or the AUCA or as the Administrator deems appropriate; and
- Advises the Minister or the Department 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, and the Deputy Minister responsible are committed to the timely exchange of information and effective consultation among themselves, where appropriate, to enable the fulfillment of their respective responsibilities.

The Administrator, the Minister, and the Deputy Minister responsible will inform and consult with each other directly and through their staff on issues in a timely manner, where appropriate, 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 publicly. External 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 pursuant to the AUCA as part of the annual reporting of the MSA.

8.2 Staffing

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

The Administrator's compensation must comply with RABCCA.

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.

In accordance with 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 and audited financial statements 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 objectives 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.

In support of the Government of Alberta's commitment to reducing regulatory requirements, agencies must provide a red tape reduction annual plan outlining their efforts to reduce red tape and achieve a 33 per cent reduction by 2023 to the Department of Energy. Agencies must provide updates to this plan through monthly progress reports solicited by the Department of Energy.

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 MRD 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 MRD will be posted on and available to the public on the MSA website by the MSA and on the Public Agency Secretariat website by the Government.

10.3 Signatures

The *Market Surveillance Administrator Mandate and Roles Document* signed this _____ day of

_____, 2021, is accepted and agreed to by



Minister of Energy

Derek E. H. Olmstead
Digitally signed by
Derek E. H. Olmstead
Date: 2021.03.22
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Market Surveillance Administrator