



Province of Alberta

SMALL POWER RESEARCH  
AND DEVELOPMENT ACT

**REVENUE ADJUSTMENT REGULATION**

**Alberta Regulation 358/1994**

With amendments up to and including Alberta Regulation 113/2003

Office Consolidation

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(Consolidated up to 113/2003)

**ALBERTA REGULATION 358/94**

**Small Power Research and Development Act**

**REVENUE ADJUSTMENT REGULATION**

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Schedule

**Definitions**

**1** In this Regulation,

- (a) "Act" means the *Small Power Research and Development Act*;
- (b) "agent" means the agent designated under section 7;
- (c) "application" means an application under section 3;
- (c.1) "Balancing Pool" has the meaning given to it in the *Electric Utilities Act*;
- (c.2) repealed AR 113/2003 s2;
- (d) "contracting producer" means an eligible power producer that is a party to a small power production contract with a particular public utility;

- (e) “effective federal tax rate” means the quotient obtained when the federal revenue adjustment tax payable is divided by the income for revenue adjustment purposes;
- (f) “effective provincial tax rate” means the quotient obtained when the provincial revenue adjustment tax payable is divided by the income for revenue adjustment purposes;
- (g) “eligible expenses” means expenses incurred by an eligible power producer to earn eligible revenue, but does not include any tax payable under the provincial tax Act or the federal Act;
- (h) “eligible power producer” means a small power producer that is eligible to receive a revenue adjustment;
- (i) “eligible revenue” means revenue of an eligible power producer from the sale of electricity from an eligible power production facility to a maximum of the allocation under the Act for the facility but does not include any revenue adjustment;
- (j) “federal Act” means the *Income Tax Act* (Canada);
- (k) “federal revenue adjustment tax payable” is the tax payable under the federal Act if the income for revenue adjustment purposes were the only taxable income under that Act;
- (l) “income for revenue adjustment purposes” is the amount by which the eligible revenue exceeds the eligible expenses;
- (m) “provincial revenue adjustment tax payable” is the tax payable under the provincial tax Act if the income for revenue adjustment purposes were the only taxable income under that Act;
- (n) “provincial tax Act” means the *Alberta Corporate Tax Act*;
- (o) “revenue adjustment” means a revenue adjustment that may be paid under section 4;
- (p) “tax for revenue adjustment purposes” means the aggregate of the federal revenue adjustment tax payable and the provincial revenue adjustment tax payable;
- (q) “taxation year” means, in respect of an eligible power producer, the taxation year of the producer for the purposes of the federal Act.

**Eligible power producer**

**2(1)** Subject to subsection (2), a small power producer is eligible to receive a revenue adjustment in respect of a taxation year if

- (a) the Minister, before or during the taxation year, made a final allocation of capacity in respect of the producer's eligible power production facility,
- (b) income tax under the provincial tax Act or the federal Act in respect of the taxation year was payable and paid in full by the producer, and
- (c) the producer, in accordance with section 13, reported to the Minister all provincial and federal assessments, reassessments or additional assessments of income tax payable in respect of prior taxation years during which the producer is a party to a small power production contract.

**(2)** A small power producer is not eligible to receive a revenue adjustment in respect of a taxation year or any portion of a taxation year before January 1, 1995.

AR 358/94 s2;179/2000

**Application for revenue adjustment**

**3(1)** An eligible power producer may apply to the Minister for a revenue adjustment in respect of a taxation year in accordance with this Regulation and in a form the Minister considers reasonable.

**(2)** An application must be made no later than 3 years after the end of the taxation year in respect of which it is made.

**(3)** The eligible power producer must bear the cost of making an application for a revenue adjustment.

**Minister's determination**

**4(1)** Subject to subsection (2), the Minister may determine the amount of the revenue adjustment in respect of a taxation year that may be paid to an eligible power producer in accordance with the Schedule.

**(2)** The Minister may refuse to determine the amount of a revenue adjustment

- (a) unless the Minister has received all the information the Minister needs to make the determination, or
- (b) if the information received by the Minister in applications and supporting information provided under this Regulation is inconsistent.

**(3)** Subject to section 8, a determination made by the Minister under this section is final and binding on the eligible power producer and the Balancing Pool.

AR 358/94 s4;179/2000;113/2003

#### **Notification of determination**

**5(1)** The Minister must notify the eligible power producer of the amount of the revenue adjustment determined or redetermined under this Regulation.

**(2)** The Minister must notify the Balancing Pool of the amount of revenue adjustment payable to the contracting producer, either directly to the producer or to its agent, as the case may be, within 30 days after the Minister determines or redetermines the amount.

AR 358/94 s5;179/2000;113/2003

#### **Payment of revenue adjustment**

**6(1)** The Balancing Pool shall pay to a contracting producer a revenue adjustment for a taxation year to which the contract applies, in accordance with the notice sent to the Balancing Pool by the Minister under section 5, not more than 30 days after it receives the notice.

**(2)** An amount payable as a revenue adjustment by the Balancing Pool to a contracting producer is a debt due to the producer and may be recovered by the producer by civil action for debt.

AR 358/94 s6;179/2000;113/2003

#### **Agent**

**7(1)** Two or more contracting producers, by notice in writing to the Balancing Pool and the Minister, may designate a person as their agent for the purpose of receiving revenue adjustments under section 6.

**(2)** When the Balancing Pool makes a payment under section 6 to the agent of a contracting producer, the Balancing Pool is deemed to have made that payment to the producer.

AR 358/94 s7;179/2000;113/2003

#### **Effect of tax assessment**

**8(1)** The Minister may redetermine the revenue adjustment of an eligible power producer in respect of a taxation year if, at any time after the Minister made a determination under section 4 or a redetermination under this section in respect of that taxation year,

- (a) the producer is assessed or reassessed or an additional assessment is made pursuant to the provincial tax Act or the federal Act in respect of that year, and
- (b) as a result of the assessment, reassessment or additional assessment there is a change in the producer's tax payable under the provincial tax Act or the federal Act.

**(2)** If, during a taxation year, the Minister makes a redetermination under subsection (1) for a prior taxation year, the Minister, before giving notice under section 5(2) of the revenue adjustment for the current taxation year may change the revenue adjustment for the current taxation year to reflect the change in the revenue adjustment for the prior taxation year.

**9** Repealed AR 179/2000 s8.

#### **Revenue and expenses**

**10(1)** An application shall disclose all corporate revenue, other than any revenue adjustment, of the applicant for the taxation year by at least the following categories:

- (a) eligible revenue;
- (b) revenue from the sale of electricity from an eligible power production facility other than eligible revenue;
- (c) revenue from the sale of electricity from a facility other than an eligible power production facility having an allocation under the Act;
- (d) repealed AR 179/2000 s9;
- (e) revenue other than that described in clauses (a) to (c);
- (f) aggregate revenue of the revenue referred to in clauses (a) to (e).

**(2)** An application shall disclose all expenses of the applicant for the taxation year by at least the following categories:

- (a) eligible expenses;
- (b) expenses incurred to earn revenue described in subsection (1)(b);
- (c) expenses incurred to earn revenue described in subsection (1)(c);
- (d) repealed AR 179/2000 s9;

- (e) expenses incurred to earn revenue described in subsection (1)(e);
  - (f) aggregate of expenses incurred to earn revenue referred to in subsection (1)(f).
- (3)** An application shall show the calculation of tax for revenue adjustment purposes of the applicant for the taxation year.

AR 358/94 s10;179/2000

**Information on applicant**

**11(1)** An applicant shall include the following in the application:

- (a) the legal name of the applicant;
  - (b) the legal description of each eligible power production facility with an allocation under the Act in respect of the revenue from the sales of electricity from which the applicant is applying for a revenue adjustment;
  - (c) the legal name of the corporation holding each allocation referred to in clause (b);
  - (d) if a corporation referred to in clause (c) is not the applicant, the relationship between the corporation and the applicant;
  - (e) the size of an allocation referred to in clause (b) in MW;
  - (f) a calculation in accordance with the Schedule of the amount of revenue adjustment applied for;
  - (g) the beginning and end of the taxation year for which the application applies, by day, month and year;
  - (h) a statement indicating whether the information in the application is based on a tax return that has yet to account for the revenue adjustment or a tax return that already takes into account an estimate of the revenue adjustment;
  - (i) if more than one eligible power producer is eligible to apply in respect of a taxation year for a revenue adjustment in respect of an eligible power production facility identified pursuant to clause (b), the eligible revenue for the year of each of the producers from the sale of electricity from the facility.
- (2)** An application must be signed by an authorized officer of the applicant.
- (3)** An application must be accompanied by the following:

- (a) a copy of the applicant's returns under the provincial tax Act and the federal Act filed for the taxation year for which the application is made;
  - (b) financial statements audited by an independent auditor and engineering analyses prepared by an independent professional engineer identifying all revenues, expenses and income tax of the applicant for each eligible power production facility identified in the application pursuant to subsection (1)(b);
  - (c) projected financial statements, including balance sheets and revenue and expense statements, identifying all revenue, expenses, income tax and projected tax behaviour of the applicant for each eligible power production facility identified in the application pursuant to subsection (1)(b);
  - (d) any other information that the Minister requires to verify the accuracy of the information provided in or with the application.
- (4)** Financial statements referred to in subsection (3)(c) must
- (a) be in respect of each taxation year
    - (i) that ends after the end of the taxation year for which the application is made, and
    - (ii) all or part of which is included in the term of small power production contract to which the application relates,
  - (b) be adjusted for past actual revenues, expenses and income taxes in respect of each taxation year
    - (i) that ends before the commencement of the taxation year in respect of which the corresponding application is made, and
    - (ii) all or part of which is included in the term of the small power production contract,
  - (c) show that all the expenses, including capital cost allowances, of each eligible power production facility to which the corresponding application relates are allocated to the facility during the term of the facility's small power production contract to the full extent and at the maximum yearly rates allowed by the provincial tax Act and the federal Act, and

- (d) if the corresponding application or accompanying tax returns indicate revenue of the kind described in section 10(1)(b) to (e), show that the expenses described in section 10(2)(a) only include a reasonable portion of corporate administrative expenses.

### Waiver

**12(1)** The Minister may waive the requirement for audited statements and engineering analyses under section 11(3)(b) if

- (a) the application and tax returns disclose that during the taxation year, the applicant only earned revenues from and incurred expenses for the generation and sale of electricity from one or more eligible power production facilities having allocations under the Act, and
- (b) at least 85% of the revenue from each facility referred to in clause (a) is attributable to the sale of power delivered within the amount of the allocation for the facility.

**(2)** If the Minister gives a waiver under subsection (1) in respect of a taxation year of an applicant, the eligible expenses of the applicant for the year are the portion of all expenses of the applicant for the year the Minister reasonably considers attributable to the generation of electricity, the sale of which results in eligible revenue of the applicant for the year.

### Report on assessments, etc.

**13** A report referred to in section 2(g) shall be accompanied by supporting information of the kind referred to in section 11(3), amended to reflect the assessments, reassessments or additional assessments.

## Schedule

### Calculation of the Revenue Adjustment

**1** Subject to a redetermination by the Minister under this Regulation, the revenue adjustment of an eligible power producer for a taxation year is an amount calculated in accordance with the following equation:

$$R_a = \text{the lesser of } I_t [1/(1-P_r - (.95F_r))] \text{ or } .15R_e$$

Where

$R_a$  is the revenue adjustment of the producer for the year

$I_t$  is the tax for revenue adjustment purposes of the producer for the year

$P_r$  is the effective provincial tax rate of the producer for the year

$F_r$  is the effective federal tax rate of the producer for the year

$R_e$  is the eligible revenue of the producer for the year



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