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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 23

NATURAL GAS MARKETING ACT

THE MINISTER OF ENERGY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 23

1986

NATURAL GAS MARKETING ACT

(Assented to , 1986)

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

Interpretation

1(1) In this Act,

(a) “Commission” means the Alberta Petroleum Marketing Commission incorporated under the *Petroleum Marketing Act*;

(b) “gas” means a gaseous mixture consisting primarily of methane;

(c) “gas contract” means a contract under which gas is sold and delivered by a seller to a buyer, and includes an agreement that varies or amends that contract and an arbitration award that relates to that contract;

(d) “marketable gas” means marketable gas as defined in the regulations;

(e) “prescribed deregulation date” means 8 a.m. Mountain Standard Time on the date designated by the Minister as the prescribed deregulation date for the purposes of this Act;

(f) “record” means a record as defined in the *Financial Administration Act*.

(2) The Minister may by regulation designate a date as the prescribed deregulation date for the purposes of this Act.

(3) Where any reference is made in this Act or any regulation, order or decision under this Act to a month, whether by its name or not, the reference shall be construed to be the period commencing at 8 a.m. Mountain Standard Time on the first day of that month and ending immediately before 8 a.m. Mountain Standard Time on the first day of the next month.

PART 1

SERVICES RELATING TO PRICE COMPONENTS

Interpretation

2(1) In this Part,

(a) “Alberta cost of service” means the classes of costs and charges that are constituted by the regulations as the Alberta cost of service for the purposes of this Part;

(b) “component provision” means

(i) in relation to a gas contract, a provision contained in the contract and referred to in section 3(1), or

(ii) in relation to gas contracts with the same buyer, a provision referred to in section 3(1) that is common to the contracts,

and includes any other provisions in the gas contract or gas contracts that contain guidelines or directions to be followed by the Commission in the provision of services in relation to a price component;

- (c) “price component”, in relation to a gas contract, means
- (i) the Alberta cost of service, if the gas contract provides for the deduction or addition of the buyer’s Alberta cost of service in the calculation of the price payable for gas delivered under the contract,
 - (ii) any class of costs or charges that is, according to the gas contract, a component in the calculation of the price payable for gas delivered under the contract, or
 - (iii) any class of revenue that is, according to the gas contract, a component in the calculation of the price payable for gas delivered under the contract.

(2) If the text of a component provision in gas contracts with the same buyer is not identical but is in the opinion of the Commission substantially the same, the gas contracts shall be considered as having a common component provision for the purposes of this Part.

Commission
services re price
components

3(1) If a gas contract contains a provision, or 2 or more gas contracts with the same buyer contain a common provision, that

- (a) requires or authorizes the Commission to provide services in relation to a price component, or
- (b) otherwise indicates an intention to confer on the Commission the power to provide services in relation to a price component,

the Commission may, subject to this Part and the regulations, provide those services for the purposes of the gas contract or gas contracts in respect of any month to which the provision applies.

(2) The services that the Commission may provide pursuant to a component provision may, without limitation, consist of or include any of the following:

- (a) the determination of price components;
- (b) the confirmation or verification of price components;
- (c) the allocation of all or part of the amount of a price component to a gas contract or gas contracts;
- (d) the making of decisions respecting the redetermination of price components or the calculation of adjustments of price components;
- (e) any other services that pertain to or are incidental to the ascertainment of the amounts of price components.

Approval of
component
provision

4(1) Subject to subsection (2), a component provision, or an amendment or replacement of a component provision, is subject to the approval of the Commission, and, in the absence of its approval, the Commission may refuse to provide services under the component provision, the component provision as amended or the replacement component provision, as the case may be.

(2) The Commission’s approval is not required in respect of an amendment or replacement of a component provision

- (a) that does not affect the Commission's powers or duties under the component provision,
- (b) that reduces the scope of the Commission's services under the component provision,
- (c) that results in the termination of the Commission's services in relation to a price component, or
- (d) that by reason of the regulations does not require the Commission's approval.

Appeal to Public Utilities Board **5** In the circumstances provided for in the regulations, a decision of the Commission made pursuant to this Part is appealable to the Public Utilities Board in accordance with the regulations.

Recovery of costs **6** The costs and fees chargeable by the Commission under the regulations relating to services provided by the Commission under this Part are recoverable by the Commission in an action in debt against the buyer under the gas contract or gas contracts.

Regulations **7** The Lieutenant Governor in Council may make regulations

- (a) respecting the classes of costs and charges that constitute the Alberta cost of service for the purposes of this Part;
- (b) respecting the Commission's powers and duties with respect to the determination of the Alberta cost of service for a buyer under gas contracts in respect of any month and the allocation of any part of a buyer's Alberta cost of service for a month;
- (c) respecting applications to the Commission for approvals under section 4;
- (d) prescribing, for the purposes of section 4(2)(d), any additional circumstances in which the Commission's approval under section 4(1) is not required;
- (e) respecting the powers and duties of the Commission and of buyers and sellers under gas contracts in relation to the provision of services by the Commission under this Part, including, without limitation, the powers and duties of the Commission and those buyers and sellers in relation to
 - (i) the examination and auditing by the Commission of records of those buyers and sellers that are relevant to the Commission's services,
 - (ii) the allocation of all or any part of the amounts of price components by the Commission,
 - (iii) the calculation of adjustments of price components and the application of those adjustments, and
 - (iv) the redetermination of price components;
- (f) respecting the confidentiality of information submitted to the Commission under this Part;
- (g) respecting the circumstances in which hearings are required or authorized to be held by the Commission under this Part and any matters related to those hearings;

(h) respecting the circumstances in which a decision of the Commission made pursuant to this Part is appealable to the Public Utilities Board and respecting any matters related to those appeals, including the suspension of a decision of the Commission that is the subject of such an appeal;

(i) respecting the Commission's costs and fees for providing services under this Part, the persons to be charged for those costs and fees and the manner in which and the time within which those costs and fees are to be paid.

PART 2

PRODUCER SUPPORT FOR DOWNSTREAM PRICING

Interpretation
and application

8(1) In this Part,

(a) "finding of producer support" or "finding" means a finding issued by the Commission under section 9(2);

(b) "netback gas" means marketable gas sold and delivered pursuant to producer-shipper contracts under which the same shipper is the buyer, where the price payable to the producers for gas so delivered is calculated in accordance with a netback pricing formula, but does not include marketable gas sold and delivered pursuant to a producer-shipper contract under which the producer's obligation to deliver gas under the contract is preconditioned on his consent to the actual resale price or prices used in the netback pricing formula;

(c) "netback pricing formula" means a formula or method under which the actual price payable by the shipper for marketable gas sold and delivered pursuant to a producer-shipper contract is calculated wholly or partly by reference to a price or prices payable to the shipper on the resale of gas by him, whether the formula or method is contained in or incorporated by reference in the producer-shipper contract;

(d) "producer" means the seller under a producer-shipper contract;

(e) "producer-shipper contract" means a gas contract relating to the first sale and delivery of

(i) gas after it is first recovered from a well, if the gas is marketable gas at the time it is so recovered, or

(ii) gas after it first becomes marketable gas, in any other case,

and includes a gas contract that is deemed by the regulations to be a producer-shipper contract for the purposes of this Part;

(f) "shipper" means the buyer under a producer-shipper contract.

(2) This Part does not apply to gas recovered from a well outside Alberta.

Commission
finding of
producer support

9(1) Subject to this Part, a shipper of netback gas may not, during any period after the prescribed deregulation date,

- (a) remove that gas from Alberta for resale outside Alberta, or
- (b) deliver that gas in Alberta for resale to another person,

unless there is in effect during that period a finding of producer support in relation to that netback gas.

(2) The Commission shall issue a finding of producer support for the purposes of subsection (1) where

(a) the Commission has determined that the shipper has, in accordance with the regulations and before the netback gas was so removed or resold, obtained the prescribed minimum degree of support of the producers of the netback gas for the resale of the netback gas

- (i) at a specified price,
- (ii) at or above a minimum price,
- (iii) at a price determined in accordance with a specified formula or method for the determination of the price, or
- (iv) at any price to be negotiated by the shipper,

or

(b) the Commission has determined

(i) that the price at which the gas is to be resold, or the formula or method to be used to calculate the price at which the gas is to be resold,

(A) has been determined by arbitration, or

(B) is in the process of being determined by arbitration,

(ii) that the shipper has, in accordance with the regulations and prior to the commencement of the arbitration proceedings, obtained the prescribed minimum degree of support of the producers of the netback gas for the method of conducting the arbitration, the arbitration procedures and any criteria or guidelines to be followed by the person conducting the arbitration, and

(iii) where the Commission has made a determination under subclause (i)(A), that the arbitration was conducted in accordance with the methods and procedures and the criteria or guidelines in respect of which the prescribed minimum degree of support of the producers had been obtained.

(3) If a finding of producer support is issued under subsection (1) on the basis of a determination of the Commission under subsection (2)(b)(i)(B),

(a) the finding is subject to the condition that the arbitration will be conducted in accordance with the method and procedures and the criteria or guidelines in respect of which the prescribed minimum degree of support of the producers had been obtained,

- (b) the Commission, on the application of a producer of the netback gas, may hold a hearing to determine whether there has been a breach of the condition referred to in clause (a), and
- (c) where after the hearing the Commission determines that there has been a breach of the condition referred to in clause (a), the Commission may
 - (i) direct the shipper to conduct a vote of his producers on the question of whether the producers accept the price determined by the arbitration award or the formula or method provided for in the arbitration award for the calculation of the price, as the case may be, and
 - (ii) revoke the finding if the result of the vote is that the prescribed minimum degree of producer support is not obtained for that price or that formula or method, as the case may be.
- (4) Where the Commission has reason to believe that a finding of producer support may have been obtained by misrepresentation of any fact material to the Commission in making the finding, the Commission
 - (a) may hold a hearing on the matter, and
 - (b) may revoke the finding of producer support if after the hearing the Commission determines that the finding was obtained by misrepresentation of any fact material to the Commission in making it.
- (5) A revocation of a finding of producer support shall be made effective not earlier than
 - (a) the first day of the month following the month in which the revocation is made, in the case of a revocation under subsection (3), or
 - (b) the first day of the month in which the notice of the hearing was given to the shipper, in the case of a revocation under subsection (4).
- (6) The Commission shall, as soon as possible after revoking a finding, serve a notice of the revocation on the shipper and give the shipper directions respecting the notification by the shipper to the producers of the netback gas of the revocation.
- (7) If
 - (a) netback gas is removed from Alberta or delivered for resale in Alberta after the prescribed deregulation date, and
 - (b) the Commission, before the prescribed deregulation date, had made a determination that the producers of all or substantial amounts of that netback gas had consented to
 - (i) the price at which the gas was to be resold,
 - (ii) a minimum price at or above which the gas could be resold,

(iii) a specified formula or method for determining the resale price, or

(iv) an authorization to the shipper to negotiate the resale at any price,

the determination of the Commission shall be deemed to be a finding of producer support for the purposes of subsection (1) in relation to that gas.

Penalties

10(1) In each case where a shipper removes or resells netback gas in contravention of section 9(1), the Commission may impose penalties in relation to the netback gas at a rate per gigajoule prescribed by the Commission, but the rate so prescribed shall not exceed the maximum rate prescribed by the regulations.

(2) Penalties imposed pursuant to subsection (1) are recoverable by the Commission in a civil action against the shipper.

(3) If the Commission recovers penalties under this section, the Commission shall distribute all or part of the money recovered as penalties in accordance with the regulations to producers of the netback gas in respect of which the penalties were imposed.

(4) Notwithstanding any agreement to the contrary, the shipper is not entitled to recover from his producers, directly or indirectly, any penalties imposed on him under this Part.

Regulations

11 The Lieutenant Governor in Council may make regulations

(a) respecting the circumstances in which a gas contract is deemed to be a producer-shipper contract for the purposes of this Part;

(b) prescribing what constitutes the minimum degree of support of producers for the purposes of section 9 and respecting the manner in which that minimum degree of support is to be determined;

(c) respecting the circumstances in which a shipper is deemed to have obtained the prescribed minimum degree of support of producers for the purposes of section 9;

(d) respecting the voting procedures and other requirements to be complied with by a shipper in obtaining the prescribed minimum degree of support of producers under section 9;

(e) prescribing a maximum rate per gigajoule for the purposes of section 10(1);

(f) respecting the obligations of the Commission in relation to the distribution pursuant to section 10(3) of all or part of the money recovered as penalties under this Part.

PART 3

PRICE ARBITRATION UNDER CERTAIN GAS CONTRACTS

12(1) For the purposes of this Part, a gas contract is rendered ineffective by the termination of gas pricing regulation if, after the prescribed deregulation date,

(a) the price payable for gas delivered under the contract after the prescribed deregulation date is unascertainable in any of the following circumstances, namely,

(i) where the price cannot be ascertained by reason of the fact that it is calculated with reference to the “Alberta border price” or is a price derived from the “Alberta border price”, or

(ii) where the contract provides for the calculation of the price by reference to some other price, cost or other amount or an average of prices, costs or other amounts, the parties to the contract are unable to ascertain that price, cost or other amount or that average after the prescribed deregulation date, and their inability to do so is related to the termination of gas pricing regulation under the *Natural Gas Pricing Agreement Act*,

and

(b) the contract either

(i) does not provide an alternative price or reference price, or any method or formula for calculating the price, for gas delivered under the contract after that date, or

(ii) provides an alternative price or reference price, or a method or formula for calculating the price, for gas delivered under the contract after that date but the price is unascertainable under that alternative because of the existence of any of the circumstances described in clause (a).

(2) If a gas contract is rendered ineffective by the termination of gas pricing regulation, the seller or buyer under the contract may, by a written notice given to the other in accordance with subsection (3), direct that the price of gas delivered under the contract after the prescribed deregulation date is to be redetermined by arbitration under the *Arbitration Act*, and, on giving the notice, the seller and buyer shall proceed to arbitration under that Act with respect to that price redetermination.

(3) A notice referred to in subsection (2) shall be given not later than the 15th day of the 2nd month following the month in which the prescribed deregulation date occurs or any extension of that period ordered by the Minister under subsection (4).

(4) The Minister may by regulation, before or after the expiration of the period prescribed under subsection (3), order an extension of that period either generally or with respect to a particular gas contract or class of gas contracts.

(5) If arbitration proceedings are commenced as a result of a notice under this section but an arbitration award is not made before the prescribed deregulation date,

(a) the gas contract continues to be effective after the prescribed deregulation date unless the parties otherwise agree or unless the contract is discharged or rendered ineffective for any reason other than by being rendered ineffective by the termination of gas pricing regulation,

(b) unless the parties otherwise agree, the price to be paid initially for gas delivered after the prescribed deregulation date shall be the same price that applied with respect to gas delivered under the gas contract in the month preceding the prescribed deregulation date,

(c) the arbitration award shall be made effective as of the prescribed deregulation date, and

(d) the price determined by or pursuant to the arbitration award supersedes the price initially applicable by reason of clause (b) and the parties to the contract shall make the necessary payments or accounting between themselves to reflect the price determined by or pursuant to the award.

PART 4

RECORDS AND INFORMATION

Regulations

13(1) The Lieutenant Governor in Council may make regulations respecting the keeping of and the furnishing to the Commission of information relating to natural gas, marketable gas and products obtained by processing natural gas or marketable gas and required for the purposes of

(a) evaluating, formulating or administering any policy or program of the Department of Energy, or

(b) administering any enactment under the administration of the Minister.

(2) Regulations under this section may provide for any matter respecting

(a) the keeping of records for the purposes of this Part and the persons required to keep them,

(b) the kinds of information to be furnished to the Commission and the persons required to furnish that information, and

(c) the confidentiality of records, returns and other information obtained by the Commission under this Part and the communication of and access to those records and returns and that information.

(3) A person required to do so by the regulations under this section shall

(a) keep records for the purposes of this Part in accordance with the regulations, and

(b) furnish to the Commission information required by the regulations.

Returns

14 The Commission may, by notice in writing, require any person to submit to the Commission, within the time stated in the notice,

(a) a written return showing in detail any information required by the notice that is relevant to

(i) the provision of services by the Commission under Part 1,

(ii) a finding of producer support under Part 2, or

(iii) any other matter arising under Part 1 or 2,

or

(b) a return containing or pertaining to any records if the records relate to anything mentioned in clause (a) and are sufficiently described in the notice to enable them to be identified.

Confidentiality

15(1) Except as provided under the regulations, a person who is or was employed or engaged in the administration or enforcement of this Act shall not

(a) communicate or allow to be communicated any record, return or other information obtained by the Commission under this Act to a person not legally entitled to that record, return or other information, or

(b) allow any person not legally entitled to any record, return or other information obtained by the Commission under this Act to have access to it.

(2) A person who knowingly receives records, returns or other information communicated to him under subsection (1) holds the records, returns or other information subject to the same restrictions under subsection (1) that apply to the person from whom the records, returns or other information were received.

(3) Notwithstanding any other Act or law, no person who is or was employed or engaged in the administration or enforcement of this Act shall be required, other than in proceedings relating to the administration or enforcement of this Act, to give evidence relating to any record, return or other information obtained under this Act or to produce anything containing that record, return or other information.

Offences

16 A person who

(a) fails to comply with section 13(3) or 15 or a notice under section 14, or

(b) files or submits to the Commission under this Act a report, return or other information or makes any statement or answers any question knowing that the report, return or other information is false or misleading or misrepresents or fails to disclose a material fact,

is guilty of an offence.

PART 5
GENERAL

Commission
procedures
generally

17(1) For the purposes of this Act and the regulations, the Commission may make rules respecting procedures for making applications and representations to the Commission, the conduct of hearings before the Commission and generally the manner of conducting any business before the Commission under this Act.

(2) In proceedings before the Commission, the Commission may require evidence to be given under oath.

(3) The Commission may delegate to one of its members any of the powers or duties of the Commission under this Act or the regulations.

(4) The Commission may authorize any one of its members to report to the Commission on any question or matter arising in connection with the business of, or any application or proceeding before, the Commission under this Act or the regulations, and the member has all the powers of the Commission for the purpose of taking evidence or acquiring the necessary information for the purpose of the report, and when the report is made, it may be adopted as the decision of the Commission or otherwise dealt with as the Commission considers advisable.

(5) The Commission, on the conduct of a hearing, is not bound by the rules of law concerning evidence applicable to judicial proceedings.

Procedures
respecting
applications

18(1) Unless the Commission directs that a hearing is to be held with respect to a decision of the Commission under Part 1 or a finding of producer support under Part 2, the Commission may make its decision on the application on the basis of

(a) the statements in the application and the evidence accompanying the application, and

(b) the written representations of persons who are parties to the proceedings or who, at the direction of the Commission, have been given notice of the application and an opportunity to submit written representations to the Commission in respect of the subject-matter of the hearing.

(2) If an application is made to the Commission for a decision under Part 1 or a finding of producer support under Part 2, the Commission may give directions respecting

(a) the giving of notice by the applicant of his application to interested parties,

(b) any hearing to be held with respect to the application and the giving of notice of the hearing, and

(c) if no hearing is to be held in respect of the application, the procedures under which interested parties are to be given an opportunity to submit written representations to the Commission respecting the application, and the giving of notice of those procedures to those interested parties.

(3) For the purposes of this section, a person is an interested party in relation to an application to the Commission under this Act if the Commission is satisfied that the person is

(a) a party to a contract affected by the Commission's decision, in the case of an application under Part 1, or

(b) a party to a producer-shipper contract referred to in Part 2, in the case of an application under Part 2 that affects or may affect that contract.

Protection
re evidence

19(1) No person shall be excused from testifying or from producing any book, document or paper in an investigation or inquiry by or on a hearing before the Commission when ordered to do so by the Commission, on the ground that the testimony, book, document or paper might tend to incriminate him or subject him to penalty or forfeiture.

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

Witnesses
at hearing

20(1) In the case of failure or refusal by a person to comply with a notice to attend issued by the Commission, or to produce a book, document or paper 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 witness before the Commission, or the production by him of the book, document or paper.

(2) In the case of refusal by a witness to give evidence or answer as to any matter regarding which he is questioned before the Commission, or to produce a book, document or paper 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.

Appeal to
Court of Appeal

21(1) Subject to the regulations, a decision of the Commission under Part 1 or 2 is appealable to the Court of Appeal on a question of jurisdiction or a question of law.

(2) Appeals under this section shall be commenced and conducted in accordance with the regulations.

(3) The operation of a decision of the Commission under Part 1 or 2 is not suspended by an appeal under this section, or any further appeal, but if an appeal is commenced under this section, the Commission may suspend the operation of its decision until the appeal is concluded, or the time for appeal to the Supreme Court of Canada has expired, or any appeal is abandoned.

Protection
from action

22 No action or proceeding may be brought against the Commission or any member or employee of the Commission in respect of any act or thing done purportedly in pursuance of this Act or the regulations or in pursuance of any decision of the Commission under this Act.

Proof of
Commission
documents

23(1) A decision or finding or other document purporting to be issued by authority of the Commission, when signed by the chairman, vice-chairman or a member of the Commission, shall be admitted in evidence as prima facie proof of its contents without any proof of the signature of or of the authority of the chairman, vice-chairman or member, as the case may be, to sign the document or of his appointment as a member of the Commission or of his designation as chairman or vice-chairman, as the case may be.

(2) A copy of a decision, finding or other document purporting to be issued by authority of the Commission, when certified as a true copy by the Commission's secretary, shall be admitted in evidence as prima facie proof of the document and its contents without any proof of the authority of the member of the Commission by whom the document purports to be signed and without proof of the signature of or of the authority of the Commission's secretary or of his appointment.

Offences

24(1) A person who is guilty of an offence under this Act is liable to a fine of not more than

(a) \$100 000, or

(b) where the contravention occurs and continues for more than 1 day, \$25 000 for each day on which the offence occurs and continues.

(2) Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the fines provided for the offence.

Regulations

25(1) The Lieutenant Governor in Council may make regulations

(a) defining "marketable gas" for the purposes of this Act;

(b) prescribing standard methods for the conversion of volumetric measurements of marketable gas to gigajoules for any purpose related to this Act;

(c) respecting fees payable to the Commission for services performed under this Act;

(d) respecting the exemption of any class of gas or any class of persons or contracts from the operation of any or all of the provisions of this Act or respecting the circumstances in which any provision of this Act does not apply;

(e) respecting reviews by the Commission of decisions made by it under this Act;

(f) respecting the commencement and conduct of appeals to the Court of Appeal under this Act;

(g) providing for any matter in connection with or incidental to the administration of this Act.

(2) Regulations made under this Act after the prescribed deregulation date may be made effective as of any date not earlier than the first day of the month preceding the month in which the regulation is enacted.