

1986 BILL 24

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First Session, 21st Legislature, 35 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 24

**ARBITRATION AMENDMENT ACT, 1986**

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THE MINISTER OF ENERGY

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 24

1986

### ARBITRATION AMENDMENT ACT, 1986

(Assented to \_\_\_\_\_, 1986)

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

- 1 *The Arbitration Act is amended by this Act.*
- 2 *Section 17 is repealed and the following is substituted:*

17(1) In this section,

- (a) "arbitrator" includes an umpire and referee in the nature of an arbitrator;
- (b) "end user" means the buyer of gas under a gas contract who purchases the gas for the purpose of using or consuming it;
- (c) "gas" means a gaseous mixture consisting primarily of methane;
- (d) "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.

(2) Subject to subsection (3), this section applies to every submission, whether coming into existence before or after the coming into force of this section, that provides for the arbitration of present or future differences relating to

- (a) the initial determination or a redetermination of the price of gas delivered under a gas contract,
- (b) the creation, replacement or modification of a method or formula for the calculation of the price of gas delivered under a gas contract, or
- (c) the determination of the price of gas delivered under a gas contract in place of a method or formula for the calculation of the price of gas delivered under the gas contract.

(3) The buyer and seller under a gas contract may agree to vary or make inapplicable all or any of the provisions of this section in relation to a submission to which this section applies only if the agreement is made after the coming into force of this section.

## Explanatory Notes

1 This Bill will amend chapter A-43 of the Revised Statutes of Alberta 1980.

2 Section 17 presently reads:

*17(1) In this section,*

*(a) "commodity value of gas" means the aggregate of*

*(i) the thermal value of gas determined by reference to the volume-weighted average prices of substitutable energy sources competing with gas for the various end uses of gas in the consuming markets served, directly or through exchange, by the buyer of gas under a gas purchase contract, and*

*(ii) the premium value of gas determined by reference to its inherent special qualities when compared with competing energy sources;*

*(b) "field value" means the commodity value of gas less just and reasonable costs, charges and deductions that are or may be fixed, determined or allowed for the transportation and distribution of that gas from the point of sale under the gas purchase contract to the point of end use;*

*(c) "gas purchase contract" means a contract for the sale and purchase of gas produced in Alberta but does not include a contract for the sale of gas by the owner of a gas utility (as defined in the Gas Utilities Act) to a purchaser for consumption by that purchaser.*

*(2) This section applies to every submission, whether coming into existence before or after the commencement of this section, which provides for the redetermination of the purchase price of gas sold under a gas purchase contract by arbitration in the event that the buyer and seller are unable to agree on the redetermination, notwithstanding anything in the gas purchase contract or any other document.*

*(3) When arbitration is conducted with respect to the redetermination of the price of gas sold under a gas purchase contract, the arbitrators shall*

*(a) determine the field value of the gas,*

*(b) use the field value so determined in fixing the redetermined price of the gas, and*

(4) In an arbitration under this section the arbitrator shall have regard to at least the following matters to the extent that evidence is adduced with respect to those matters:

(a) the prices of substitutable energy sources

(i) that compete with gas for the various end uses of gas in the markets served by the buyer, where the buyer is not the end user of the gas, or

(ii) that are available for use or consumption by the buyer in place of gas, where the buyer is the end user of the gas,

taking into account any differences in the efficiencies of gas and those substitutable energy sources;

(b) the prices of other gas

(i) that competes in the same markets as those being served by the buyer, where the buyer is not the end user of the gas, or

(ii) that is available for use or consumption by the buyer, where the buyer is the end user of the gas;

(c) the explicit or implicit prices of other gas produced in Alberta and delivered under other gas contracts;

(d) the prices for gas in markets outside Canada that could be served by gas produced in Alberta if there were no quantitative restrictions imposed on the export of gas from Canada by or under any law in force in Canada.

(5) The arbitrator, in having regard to each of the matters enumerated in subsection (4), shall take at least the following matters into account to the extent that evidence is adduced with respect to those matters:

(a) differences in transportation costs;

(b) the times at which prices were agreed to between the respective sellers and buyers;

(c) similarities and dissimilarities between the provisions of the gas contract and the provisions of contracts for the purchase of the substitutable energy sources and gas referred to in subsection (4).

(6) In an arbitration under this section,

(a) the arbitrator must be ordinarily resident in Alberta, if the arbitration is conducted by a single arbitrator, and

(b) at least half of the arbitrators must be ordinarily resident in Alberta, if the arbitration is conducted by 2 or more arbitrators.

- (c) specify in the award the date on which the redetermined price is to be effective which shall, unless the gas purchase contract otherwise provides, be the earliest date that the redetermined price could have been effective under the gas purchase contract.*
- (4) In an arbitration to which this section applies,*
- (a) the arbitrator must be a Canadian citizen ordinarily resident in Alberta, when the arbitration is conducted by a single arbitrator;*
- (b) at least one of the arbitrators must be a Canadian citizen ordinarily resident in Alberta, when the arbitration is conducted by 2 arbitrators;*
- (c) an umpire or referee must be a Canadian citizen ordinarily resident in Alberta, when the arbitration is conducted by an umpire or referee;*
- (d) the 3rd arbitrator must be a Canadian citizen ordinarily resident in Alberta, when the submission provides that the arbitration is to be conducted by 3 arbitrators and that the 3rd arbitrator is to be appointed by 2 arbitrators appointed respectively by the buyer and seller under the gas purchase contract.*
- (5) Arbitration shall be commenced and proceeded with at the option of either the buyer or seller under a gas purchase contract, notwithstanding that the buyer and seller agreed that resort to arbitration is dependent on the concurrence of both of them.*
- (6) Any agreement by any person to vary or make inapplicable any or all of the provisions of this section is against public policy and void.*