

1986 BILL 49

First Session, 21st Legislature, 35 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 49

TAKE-OR-PAY COSTS SHARING ACT

THE MINISTER OF ENERGY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 49

1986

TAKE-OR-PAY COSTS SHARING 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;
- (b) "Consolidated" means Consolidated Natural Gas Limited;
- (c) "delivery month" means a month designated by the regulations as a month in respect of which levies are payable under this Act;
- (d) "designated collector" means a person designated by the Commission pursuant to section 5(1) as a person responsible for collecting levies and remitting them to the Commission;
- (e) "Fund" means the Take-or-pay Costs Sharing Fund established by this Act;
- (f) "gas" means
 - (i) natural gas recovered from a well in Alberta and not processed for the purpose of obtaining products from that natural gas, or

(ii) where natural gas recovered from a well in Alberta is processed, the product resulting from the processing that is a gaseous mixture consisting primarily of methane;

(g) "levy" means a levy payable on gas under this Act;

(h) "leviable gas" means gas on which levies are payable under this Act;

(i) "Minister" means the Minister of Energy;

(j) "natural gas" includes the gaseous component of petroleum;

(k) "Nova" means NOVA, AN ALBERTA CORPORATION;

(l) "Nova system" means the pipeline system operated within Alberta by Nova;

(m) "payor" means a person liable for the payment of levies;

(n) "recipient corporation" means a Topgas corporation, TCPL or Consolidated;

(o) "record" means a record as defined in the *Financial Administration Act*;

(p) "TCPL" means TransCanada PipeLines Limited;

(q) "TCPL system" means the pipeline system operated by TCPL;

(r) "take-or-pay costs" means amounts that are within the classes of costs and charges constituted by the regulations as take-or-pay costs for the purposes of this Act;

(s) "Topgas corporation" means

(i) Topgas Holdings Limited,

(ii) Topgas Two Inc., or

(iii) Topcon Holdings (Alberta) Limited.

(2) 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 as being to the period commencing at 8:00 a.m. Mountain Standard Time on the first day of that month and ending immediately before 8:00 a.m. Mountain Standard Time on the first day of the next month.

Imposition
of levy

2(1) Subject to this Act and the regulations, a levy is payable on gas upon its delivery within Alberta to TCPL or Consolidated.

(2) Levies are payable under subsection (1)

(a) on gas delivered to TCPL whether TCPL takes delivery of the gas as a buyer or for the purpose of transporting it in the TCPL system, and

(b) whether the gas is resold by TCPL or Consolidated for delivery within Alberta or outside Alberta.

- (3) Levies are not payable on
 - (a) gas delivered by Consolidated into the TCPL system within Alberta, or
 - (b) gas exempt from the payment of levies by the regulations.
- (4) The person liable for the payment of a levy is
 - (a) the seller under the contract, where TCPL or Consolidated takes delivery of leviabale gas as the buyer under a contract for the sale and purchase of gas, or
 - (b) the person for whose account the gas was being transported by Nova in the Nova system immediately before its delivery into the TCPL system, where TCPL takes delivery of leviabale gas for the purpose of transporting it in the TCPL system.
- (5) A levy
 - (a) is payable on the quantities of gas delivered to TCPL or Consolidated in a delivery month,
 - (b) is payable at the rate or rates or in the amounts prescribed by an order of the Commission or in accordance with a method prescribed by an order of the Commission,
 - (c) shall be calculated and paid in the manner and at the time or times provided in this Act and the regulations, and
 - (d) is payable to the Commission.
- (6) An order of the Commission under subsection (5)(b)
 - (a) shall be made in accordance with any directions provided for in the regulations, and
 - (b) is not invalid by reason only of the fact that it results in levies being payable at different rates in respect of different classes of gas.
- (7) An order of the Commission under subsection (5)(b) may be made effective as of the first day of the month preceding the month in which the order is made.
- (8) Except as provided in the regulations, no allowance, credit or other deduction shall be made or taken in calculating, paying or remitting any levy.

Take-or-pay
Costs Sharing
Fund

- 3(1)** There shall be a fund called the "Take-or-pay Costs Sharing Fund", which shall be held and administered by the Commission.
- (2) The Commission shall keep a separate accounting record of the Fund.
- (3) Levies, interest and penalties received by the Commission under this Act shall be paid into the Fund.
- (4) The income of the Fund accrues to the Fund.

- (5) The following shall be paid out of the Fund:
- (a) payments made pursuant to section 4;
 - (b) refunds of overpayments of amounts collected as levies, interest or penalties;
 - (c) money directed to be transferred to the Commission's general revenues pursuant to subsection (6);
 - (d) money directed to be paid pursuant to the regulations in the course of winding up the Fund;
 - (e) remuneration payable to designated collectors under section 5(4)(f);
 - (f) any other amounts directed to be paid from the Fund by the regulations.
- (6) The Commission may, with the approval of the Minister, transfer from the Fund to its general revenues any amounts determined by it as properly attributable to its costs incurred in the administration of this Act and the regulations.
- (7) After the delivery month specified by the regulations as the last delivery month for the purposes of this Act, the Fund shall be wound up in accordance with the regulations.
- (8) The Commission shall, as soon as practicable after the end of each calendar year, prepare a report summarizing the operation of the Fund in the preceding calendar year and containing its audited financial statements.
- (9) When the report for a calendar year is prepared pursuant to subsection (8), the Commission shall submit the report to the Minister, who shall lay a copy of it before the Legislative Assembly if it is then sitting and, if not, within 15 days after the commencement of the next sitting.

Payments
to recipient
corporations

4(1) Subject to and in accordance with this Act and the regulations, the Commission shall make payments from the Fund to recipient corporations.

(2) A payment made to a recipient corporation in relation to a particular delivery month is subject to the conditions prescribed by the regulations and to any additional conditions prescribed by the Commission with respect to the payment.

(3) A recipient corporation shall, in respect of each payment made to it under this section, comply with the conditions on which the payment is made.

Designated
collectors

5(1) Subject to the regulations, the Commission may designate a person, other than the person liable for the payment of the levy, as a person responsible for collecting levies and remitting them to the Commission.

(2) The Commission may give directions to a payor requiring the payor to pay levies to a designated collector specified in the directions, and a payment so made to that designated collector operates

to discharge that payor's liability for levies to the extent of the payment.

(3) If a designated collector owes money to a payor required to pay levies to the designated collector by reason of directions given pursuant to subsection (2),

(a) the designated collector may deduct from any money otherwise payable by him to the payor all or part of the levies then owing and transfer the amount so deducted to the designated collector's separate account referred to in subsection (4)(c), and

(b) on the making of a deduction and transfer in accordance with clause (a), the liability of the payor for the payment of the levies is discharged to the extent of the amount so deducted and transferred.

(4) A designated collector

(a) shall collect and remit levies to the Commission in accordance with the regulations and any directions given to him by the Commission in relation to his responsibilities as a collector and remitter of levies,

(b) is the agent of the Commission for all purposes related to his duties as a designated collector,

(c) shall keep any levies collected by him in an account separate from any other money held by him and in accordance with any requirements prescribed by the regulations,

(d) shall hold the levies in trust for the Commission until they are remitted to and received by the Commission,

(e) is not liable for the payment of levies to the Commission otherwise than in respect of levies actually received by him, and

(f) shall be paid remuneration from the Fund for his services as may be prescribed by the regulations.

(5) Levies held in trust by a designated collector by reason of subsection (4)(d)

(a) do not form part of the designated collector's estate or property for any purpose, and

(b) are and remain the property of the Commission whether or not the levies are in fact kept separate from the designated collector's own estate or property.

Records

6(1) A person required to do so by the regulations shall, for the purposes of this Act, keep records in accordance with this section and the regulations.

(2) The records shall be kept

(a) at the person's place of business in Alberta,

(b) if the person has no place of business in Alberta, at a place in Alberta prescribed by the regulations, or

(c) subject to any terms and conditions the Commission may impose, at a place in Alberta or elsewhere approved by the Commission.

(3) The records shall be kept until the expiration of the 3-year period following the end of the year to which they relate unless

(a) in the case of any particular records, the Commission consents in writing to their destruction before the end of the 3-year period, or

(b) the regulations authorize their destruction before the end of the 3-year period.

(4) Notwithstanding subsection (3), if the Commission is of the opinion that it is necessary for the administration of this Act, it may, by a direction sent by registered mail or served personally, require any person required to keep records to retain those records for any longer period specified in the direction.

(5) A person in possession of records that are required to be kept under this Act shall make the records available for inspection by the Commission or a person authorized by the Commission.

Return of information

7 The Commission may, by a direction in writing, require any person required to keep records to submit to the Commission, within the time stated in the direction, a written return showing in detail any information required by the direction if it pertains to any matter related to the calculation of levies or liability for the payment of levies.

Communication of records or information

8(1) Except as provided under the regulations, a person who is or was a member or employee of the Commission 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 was received.

(3) Notwithstanding any other Act or law, no person who is or was a member or employee of the Commission 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.

Improper avoidance or reduction of levy

9(1) If the Commission determines that the result of one or more acts, agreements, arrangements, transactions or operations effected before or after the coming into force of this Act is to improperly,

artificially or unduly avoid or reduce the liability of 1 or more payors for levies, the levies shall be calculated as though the act, agreement, arrangement, transaction or operation did not exist or had not been effected.

(2) An avoidance or reduction of levies may be regarded as improper for the purposes of this Act although not otherwise illegal or unlawful.

(3) A determination of the Commission under this section may relate to any levies payable by 1 or more payors and for 1 or more periods.

(4) Written notice of a determination of the Commission under this section shall be served by registered mail or served personally on the payor or payors affected by it.

Recovery
of levies

10 Levies, interest and penalties payable under this Act are recoverable by the Commission in an action

(a) against the payor concerned, or

(b) against a designated collector who has received levies but has not remitted them to the Commission in accordance with this Act and the regulations.

Stop orders

11(1) If a payor referred to in section 2(4)(b) defaults in the payment of levies, interest or penalties for a period of more than 30 days following the date on which payment is due, the Commission, with the approval of the Minister, may issue an order directing Nova to cease transporting gas in the Nova system for the account of that payor for delivery into the TCPL system, commencing on the first day of the month following the date on which the order is served on Nova and until the Commission notifies Nova in writing that all arrears of levies, interest and penalties for which the payor was liable have been fully paid.

(2) The Commission shall serve on the payor a copy of the order made under subsection (1), and any subsequent notice under that subsection, as soon as possible after it is issued.

(3) An order under subsection (1) does not operate to

(a) frustrate or otherwise render ineffective any agreement between Nova and the payor concerned, or

(b) relieve the payor from any liability to Nova for the payment of any amount that would in any event have been payable in the absence of the order.

Incidental powers
of Commission

12 The Commission may

(a) prescribe forms to be used in the administration of this Act;

(b) enter into agreements with any persons for any purpose related to the administration of this Act.

Extension of time

13(1) If anything to be done within a number of days or at or before a time fixed by or under this Act or the regulations cannot be or has not been done within, at or before that time, the Commission may

from time to time by order appoint a further or other time for doing it, whether the time at or before or within which it ought to have been done has or has not arrived or expired, as the case may be.

(2) Anything done at or before or within the time specified in the order is as valid as if it had been done at or before or within the time fixed by or under this Act or the regulations.

Protection
from action

14 No action or proceeding may be brought against the Commission, Nova or a designated collector, any member, employee or agent of the Commission or any employee or agent of Nova or a designated collector, in respect of any act or thing done purportedly in pursuance of this Act or the regulations or in pursuance of any order or decision of the Commission under this Act or the regulations.

Offences

15(1) A person who

(a) fails to comply with this Act or the regulations, or

(b) files with or submits to the Commission under this Act or the regulations an application, report, return or other information, knowing that the application, report, return or other information

(i) is false or misleading, or

(ii) misrepresents or fails to disclose a material fact,

is guilty of an offence.

(2) 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.

(3) 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

16 The Lieutenant Governor in Council may make regulations

(a) respecting directions to the Commission for the purposes of section 2(6)(a);

(b) designating the months in respect of which levies are payable;

(c) respecting the manner in which levies are to be paid and collected and the time or times within which levies shall be paid or remitted to the Commission;

(d) respecting the calculation of the quantities of gas on which levies are payable;

(e) respecting the exemption of any gas from the payment of levies;

- (f) respecting the rights and duties of designated collectors and the remuneration payable to them;
- (g) respecting allowances, credits or other deductions that may be made or taken in calculating, paying or remitting levies;
- (h) respecting the recalculation of levies or of adjustments to levies;
- (i) respecting the liability of persons for the payment of interest to the Commission on amounts payable as levies or penalties under this Act, the rates of interest payable and the computation of interest payable;
- (j) respecting the imposition of pecuniary penalties for failure to comply with regulations requiring the filing of returns or other documents with the Commission or a designated collector;
- (k) respecting payments from the Fund made pursuant to section 4 and the conditions on which those payments are made;
- (l) respecting the classes of costs and charges that constitute take-or-pay costs for the purposes of this Act;
- (m) respecting any matter relating to the operation of the Fund;
- (n) specifying a delivery month to be the last delivery month for the purposes of this Act and respecting the winding-up of the Fund after that last delivery month;
- (o) respecting the persons required to keep records under section 6 and the records they are required to keep;
- (p) respecting the persons required to furnish information to the Commission for the purposes of this Act and the information they are required to furnish;
- (q) respecting the filing of returns with the Commission;
- (r) respecting the communication of and access to records, returns and other information obtained by the Commission under this Act;
- (s) providing for any other matter in connection with or incidental to the administration of this Act.

(2) A regulation under this Act may, if it so provides, be effective with reference to a period before it was made.

Repeal by
Proclamation

17 *After the winding-up of the Fund is completed, this Act may be repealed by Proclamation.*