

1992 BILL 12

Fourth Session, 22nd Legislature, 41 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 12

**NATURAL GAS MARKETING
AMENDMENT ACT, 1992**

THE MINISTER OF ENERGY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 12

1992

**NATURAL GAS MARKETING
AMENDMENT ACT, 1992**

(Assented to _____, 1992)

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

1 The Natural Gas Marketing Act is amended by this Act.

*2 Section 5 is amended by striking out "this Part" and
substituting "section 3".*

3 The following is added after section 6:

Commission
services by
agreement

6.1 The Commission may enter into an agreement
under which it undertakes to provide services not
otherwise provided for in section 3 on behalf of the
buyer or seller under a gas contract, or both, if the
services relate directly or indirectly to any matter
arising under the gas contract.

*4 Section 7(g) and (h) are amended by striking out "this Part"
wherever it occurs and substituting "section 3".*

Explanatory Notes

1 This Bill will amend chapter N-2.8 of the Statutes of Alberta, 1986.

2 Section 5 presently reads:

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.

3 Additional contracted services provided by the Alberta Petroleum Marketing Commission.

4 Section 7(g) and (h) presently read:

7 The Lieutenant Governor in Council may make regulations

(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

5 Section 8(1) is amended

(a) by repealing clause (a) and substituting the following:

- (a) “downstream resale”, in relation to any netback gas, means the resale of the netback gas by the shipper;
- (a.1) “finding of producer support” or “finding”, in relation to any netback gas, means a finding issued by the Commission under section 9(2) relating to the downstream resale of the netback gas;
- (b) *in clause (b) by striking out “producer-shipper contracts under which the same shipper is the buyer, where the price payable to the producers” and substituting “a producer-shipper contract, where the price payable to the producer”.*

6 Section 9 is repealed and the following is substituted:

Commission
finding of
producer
support

9(1) Subject to this Part, a shipper who purchases netback gas from a producer pursuant to a producer-shipper contract may not

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

unless there is in effect a finding of producer support relating to the downstream resale of that gas.

(2) Where the Commission has determined that the shipper has obtained producer support for a downstream resale of netback gas in accordance with the regulations, the Commission shall issue to the shipper a finding of producer support relating to the downstream resale of the gas.

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;

5 Section 8(1)(a) and (b) presently read:

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;*

6 Section 9 presently reads:

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.

9(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 for resale outside 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,*

7 Sections 10 and 11 are repealed and the following is substituted:

Prosecution
and injunction

10(1) A person who contravenes this Part or the regulations under this Part is guilty of an offence.

(2) If a person has contravened or is contravening any provision of this Part or the regulations under this Part, the Court of Queen's Bench, on application by the Attorney General by originating notice, may make an order restraining that person from contravening or continuing to contravene that provision, whether or not a conviction has been adjudged in respect of the contravention.

Regulations

11(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the manner in which or the circumstances under which a shipper may obtain producer support for a downstream resale of netback gas for the purposes of this Part;
- (b) respecting the Commission's powers and duties in relation to the issuance, suspension or revocation of findings of producer support;
- (c) respecting the rights and obligations of shippers and producers in relation to matters arising under section 9;
- (d) respecting the circumstances in which a gas contract is deemed to be a producer-shipper contract for the purposes of this Part;
- (e) respecting any other matter arising under section 9.

- (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.

7 Sections 10 and 11 presently read:

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.

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);*

(2) Regulations under this section may, without limitation, provide for any or all of the following:

- (a) obtaining producer support for a downstream resale of netback gas by way of a vote by producers conducted in accordance with prescribed rules or by way of documents signed by producers;
- (b) in the case of a vote by producers, the information to be provided by the shipper to the producers pertaining to the contractual provisions respecting the downstream resale, including
 - (i) information respecting pricing and whether the netback gas is to be resold at a specified price, at or above a minimum price, at a price determined in accordance with a specified formula or method, at any price negotiated by the shipper or at a price determined by arbitration, and
 - (ii) if the resale price is to be determined by arbitration, information related to the manner of conducting the arbitration, the arbitration procedures and the criteria or guidelines to be followed by the arbitral tribunal.

8 *This Act comes into force on Proclamation.*

(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.

8 Coming into force.