



Province of Alberta

## NATURAL GAS MARKETING ACT

# NATURAL GAS MARKETING REGULATION

### **Alberta Regulation 358/1986**

With amendments up to and including Alberta Regulation 172/2020

Current as of September 30, 2020

### Office Consolidation

© Published by Alberta Queen's Printer

Alberta Queen's Printer  
Suite 700, Park Plaza  
10611 - 98 Avenue  
Edmonton, AB T5K 2P7  
Phone: 780-427-4952  
Fax: 780-452-0668

E-mail: [qp@gov.ab.ca](mailto:qp@gov.ab.ca)  
Shop on-line at [www.qp.alberta.ca](http://www.qp.alberta.ca)

### **Copyright and Permission Statement**

Alberta Queen's Printer holds copyright on behalf of the Government of Alberta in right of Her Majesty the Queen for all Government of Alberta legislation. Alberta Queen's Printer permits any person to reproduce Alberta's statutes and regulations without seeking permission and without charge, provided due diligence is exercised to ensure the accuracy of the materials produced, and Crown copyright is acknowledged in the following format:

© Alberta Queen's Printer, 20\_\_.\*

\*The year of first publication of the legal materials is to be completed.

### **Note**

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 172/2020)

**ALBERTA REGULATION 358/86**

**Natural Gas Marketing Act**

**NATURAL GAS MARKETING REGULATION**

*Table of Contents*

- 1 Definitions
- 2 Conversions to gigajoules

**Part 1**

**Commission Services Under Part 1 of the Act**

- 3 Alberta cost of service
- 4 Approval of component provision
- 5 Charges by Commission for services
- 6 Audit by Commission
- 7 Review of decision
- 8 Appeal to Alberta Utilities Commission

**Part 2**

**Commission Findings Under Part 2 of the Act**

- 9 Interpretation
- 10 Finding of producer support based on a vote
- 11 Voting rules
- 12 Consolidated gas purchase contracts
- 13 Deemed producer support
- 14 Finding based on resale authorization provision
- 14.1 Finding based on arbitration authorization provision
- 15 Maximum penalty
- 16 Distribution of penalty proceeds
- 17 Exemption from Part 2 of the Act
- 17.1 Exemption based on consent to previous findings
- 17.2 Exemption based on AUC pricing orders
- 17.3 Exemption in special circumstances
- 17.4 Fees

**Part 3**

**Records and Information**

- 18 Interpretation and application
- 19 Monthly reports

- 20 Automatic penalties related to section 19 reports
- 21 Discretionary penalties related to section 19 reports
- 22 Penalty invoice
- 23 Information statements
- 24 Appeals respecting penalties
- 25 Alternative manner of compliance
- 26 Communication of confidential information
- 27 Retention of records

#### **Part 4 General**

- 28 Appeals to the Court of Appeal
- 29 Expiry

Schedule

#### **Definitions**

**1(1)** In this Regulation,

- (a) “Act” means the *Natural Gas Marketing Act*;
- (b) “Department” means the Department of Energy;
- (c) “Minister” means the Minister of Energy.

**(2)** For the purposes of the Act and this Regulation, “marketable gas” means a gaseous mixture that consists mainly of methane and meets specifications for use as a domestic, commercial or industrial fuel or an industrial raw material.

AR 358/86 s1

#### **Conversions to gigajoules**

**2** If it is necessary for any purpose related to the Act or this Regulation to convert volumetric measurements of natural gas or marketable gas to gigajoules, the conversion shall be made in accordance with the method of conversion in the Schedule to this Regulation.

AR 358/86 s2

## **Part 1**

### **Commission Services Under Part 1 of the Act**

#### **Alberta cost of service**

**3(1)** Subject to subsections (2) and (3), the following classes of costs and charges, wherever incurred, constitute the Alberta cost of service for the purposes of Part 1 of the Act:

- (a) costs and charges attributable to the acquisition of the gas by the buyer, except the price of the gas;
- (b) costs and charges associated with the movement and metering of the gas in Alberta;
- (c) costs and charges related to any processing required to cause the gas to become marketable gas or that are otherwise related to the supply of the gas;
- (d) interest or other costs or charges that, under a contract entered into prior to November 1, 1975, were recoverable by the buyer from the price at which he sold the gas, or any portion of those costs or charges;
- (e) costs and charges prescribed by the Commission as a return on the rate base of the buyer as established by the Commission;
- (f) costs and charges considered to be just and reasonable by the Commission in respect of costs incurred by the buyer for developing markets for gas produced in Alberta;
- (g) costs and charges considered to be just and reasonable by the Commission in respect of costs incurred by a person, whether or not the person is the buyer, to finance payments made to or for the benefit of a seller in respect of gas not taken by the buyer under a gas contract for which the seller was nevertheless entitled to be paid.

**(2)** Costs and charges associated with the movement and metering of gas in the pipeline facilities of Foothills Pipe Lines (Alta.) Ltd., as determined by the National Energy Board, are not part of the Alberta cost of service for the purposes of Part 1 of the Act.

**(3)** The Commission, in the determination of the Alberta cost of service for a buyer under one or more gas contracts in respect of any month, may

- (a) decide which costs and charges within the classes enumerated in subsection (1) are to be included in the buyer's Alberta cost of service for that month, and

- (b) decide the amount of any particular costs or charges that are to be included in the buyer's Alberta cost of service for that month.

AR 358/86 s3

**Approval of component provision**

**4(1)** An application to the Commission for approval of a component provision under section 4 of the Act

- (a) shall be in a form prescribed or approved by the Commission,
- (b) shall contain the text of the component provision to which the application relates and any other information required by the form,
- (c) shall, if the Commission so requires, be certified as to the information contained in the application in any manner the Commission directs, and
- (d) shall, unless the Commission otherwise permits, be made by the buyer under the contract.

**(2)** On accepting an application referred to in subsection (1) for filing, the Commission may require the applicant to submit any additional information or evidence that the Commission requires in connection with the application.

AR 358/86 s4

**Charges by Commission for services**

**5(1)** The Commission may establish the fees for, and determine the costs of, services provided by the Commission under Part 1 of the Act.

**(2)** The costs and fees referred to in subsection (1) and relating to services provided under section 3 of the Act are payable to the Commission by the buyer under the gas contract or gas contracts on demand by the Commission.

**(3)** The costs and fees for services provided by the Commission under an agreement made pursuant to section 7 of the Act are payable to the Commission by the persons and in the manner provided for in the agreement.

AR 358/86 s5;280/92;108/2004

**Audit by Commission**

**6** Where the Commission provides services under section 3 of the Act pursuant to a component provision in a gas contract,

- (a) employees and authorized agents of the Commission may enter at any reasonable time any premises of a buyer or seller under the gas contract for the purposes of auditing or examining any records that relate to the provision of those services, and
- (b) the buyer or seller, as the case may be, shall, for the purposes of an audit or examination referred to in clause (a),
  - (i) provide access to his premises by the persons authorized to conduct the audit or examination,
  - (ii) give all reasonable assistance to those persons,
  - (iii) answer, orally or in writing, as required, all questions relating to the audit or examination, and
  - (iv) provide all information, records and copies required by those persons.

AR 358/86 s6;280/92

**Review of decision**

**7(1)** Subject to subsection (2), a buyer or a seller affected by a decision of the Commission in relation to any services provided by the Commission under Part 1 of the Act may file a statement of objection with the Commission in respect of the Commission's decision.

**(2)** This section does not apply where

- (a) the gas contract makes this section inapplicable or precludes a review or re-examination by the Commission of its decisions,
- (b) the gas contract itself provides for the review or re-examination by the Commission of its decisions,
- (c) the gas contract provides for the settlement of objections to decisions of the Commission by arbitration or by some other method that does not include a procedure for a review or re-examination by the Commission of its decisions, or
- (d) the decision is made by the Commission under an agreement made pursuant to section 7 of the Act.

**(3)** A statement of objection

- (a) shall be filed with the Commission within 60 days after the date of the Commission's decision, and

- (b) shall specify the grounds for the objection and the changes that the person who filed it considers should be made with respect to the decision.

(4) On receiving a statement of objection, the Commission may dispense with the review of the statement under this section, and if it does so, shall notify the person who filed the statement of objection of that fact.

(5) Unless it dispenses with a review pursuant to subsection (4), the Commission shall, on receiving a statement of objection, forthwith inform the person who filed it of

- (a) any persons to whom he must give notice of the fact that he has filed the statement of objection and the time within which he must do so,
- (b) the manner in which the notice must be given, and
- (c) the form and content of the notice.

(6) A person who receives a notice pursuant to subsection (5) and wishes to make a submission with respect to the subject-matter of the statement of objection may do so by filing the submission with the Commission within 20 days after the date on which the notice is given.

(7) Unless it dispenses with the review pursuant to subsection (4), the Commission shall, within 60 days of the filing of the statement of objection,

- (a) review the statement of objection,
- (b) either dismiss the application or amend or replace the original decision, and
- (c) provide copies of the decision to the person who filed the objection and to all persons who filed submissions pursuant to subsection (6).

AR 358/86 s7;280/92;108/2004

#### **Appeal to Alberta Utilities Commission**

**8(1)** Subject to subsection (2), a decision of the Commission under Part 1 of the Act may be appealed to the Alberta Utilities Commission by

- (a) the person who filed the statement of objection under section 7,
- (b) the buyer, or

- (c) a seller who is directly affected by the decision appealed from.
- (2)** An appeal under subsection (1)
- (a) may not be made if the gas contract
    - (i) makes this section inapplicable or precludes an appeal to the Alberta Utilities Commission from the Commission's decision, or
    - (ii) provides for the settlement of an objection to a decision of the Commission by arbitration or by some other method,
  - (b) may be made only if the Commission has made a decision following a review under section 7 with respect to a statement of objection, unless the Commission has dispensed with a review of the statement pursuant to section 7(4),
  - (c) shall relate only to the subject-matter of the statement of objection, and
  - (d) shall be commenced by filing a notice of appeal with the secretary of the Alberta Utilities Commission within 60 days after the date of the Commission's notification under section 7(4) or the date of the Commission's decision under section 7(7)(b), as the case may be, and serving a copy of the notice of appeal on the Commission.
- (3)** On being served with a copy of the notice of appeal, the Commission shall furnish to the Board copies of the original decision, the statement of objection and, where a review is made under section 7, all submissions filed with the Commission under section 7(6) and the Commission's decision under section 7(7)(b).
- (4)** On hearing an appeal, the Alberta Utilities Commission may by order
- (a) confirm or vary the decision,
  - (b) refer the matter back to the Commission with directions to make a new decision in accordance with any instructions given in the order, or
  - (c) make any other disposition of the appeal that it considers appropriate in the circumstances.
- (5)** A new decision made by the Commission pursuant to subsection (4)(b) may be reviewed by the Commission and appealed to the Board in the same manner as the original decision.

(6) The *Alberta Utilities Commission Act* applies to appeals to the Board under section 5 of the Act.

AR 358/86 s8;254/2007

## **Part 2 Commission Findings Under Part 2 of the Act**

### **Interpretation**

**9(1)** In this Part,

- (a) “attributed contract quantity”, in relation to a producer-shipper contract, means the quantity of gas attributed to the contract in accordance with a method approved by the Commission pursuant to section 10(2)(a);
- (a.1) “business day” means a business day of the Commission;
- (b) “downstream contract” means a gas contract under which the shipper of netback gas delivers that gas for resale to the buyer under the contract;
- (c) repealed AR 264/96 s2;
- (c.1) “netback agreement” means
  - (i) a producer-shipper contract that contains a netback pricing formula, or
  - (ii) an agreement between a producer and a shipper which provides that the price payable to the producer for marketable gas delivered under their producer-shipper contract is to be calculated in accordance with a netback pricing formula;
- (c.2) “number vote” means a vote referred to in section 10(1)(c)(i);
- (c.3) “quantity vote” means a vote referred to in section 10(1)(c)(ii);
- (d) repealed AR 264/96 s2;
- (e) “voting deadline” means the deadline for the submission of ballots to the shipper as specified in a voting notice;
- (f) “voting notice” means a notice referred to in section 11(2)(a).

**(2)** For the purposes of a quantity vote determined on the basis of the ballots submitted by the producers under the producer-shipper contracts, the percentage interest of a producer in the attributed contract quantity for a producer-shipper contract shall be calculated in accordance with the following rules:

- (a) if the producer is the only seller under the contract, he has a 100% percentage interest in the attributed contract quantity for the contract;
- (b) if 2 or more producers are the sellers under the contract and the contract shows the respective producers as having specified undivided interests in the gas delivered under the contract, the percentage interest of each producer in the attributed contract quantity for the contract shall be proportionate to his specified undivided interest in the gas delivered under the contract;
- (c) if clause (b) does not apply but 2 or more producers are the sellers under the contract and the contract shows the respective producers as being entitled to specified portions of the sale proceeds of the gas delivered under the contract, the percentage interest of each producer in the attributed contract quantity for the contract shall be proportionate to his specified portion of the sale proceeds of the gas delivered under the contract;
- (d) if 2 or more producers are the sellers under the contract and the contract does not show the producers as having specified undivided interests in, or as being entitled to specified portions of the sale proceeds of, the gas delivered under the contract, 100% of the attributed contract quantity for the contract shall be deemed to be divided among the producers in equal shares.

**(3)** For the purposes of a quantity vote determined on the basis of the ballots submitted by only the principal sellers under the producer-shipper contracts,

- (a) a person is the principal seller under a producer-shipper contract if he is the only person named in the contract as the seller;
- (b) where 2 or more persons are named in a producer-shipper contract as the seller, the following rules apply to determine which of them is the principal seller under the contract:
  - (i) if one of the sellers is named in the contract as the only person to whom notices under the contract may be given by the shipper to all of the sellers under the

- contract, that seller is the principal seller under the contract;
- (ii) if subclause (i) does not apply and one of the sellers is the person to whom the shipper normally makes all payments under the contract, that seller is the principal seller under the contract;
  - (iii) if neither subclause (i) nor (ii) applies, the principal seller under the contract is the seller designated as the principal seller by all sellers under the contract in a notice given to the shipper;
- (c) the principal seller under a producer-shipper contract has a 100% percentage interest in the attributed contract quantity for the contract.

AR 358/86 s9;278/89;313/89;264/96

**Finding of producer support based on a vote**

**10(1)** The Commission shall make a finding of producer support based on a determination under section 10(2)(a) of the Act or make a determination under section 10(2)(b)(ii) of the Act if

- (a) the matter in respect of which the prescribed minimum degree of support of the producers is required under section 10(2)(a) or (b)(ii) of the Act is in the form of a question to be submitted to those producers for a vote,
  - (a.1) the application for the finding or determination, as the case may be, is made to the Commission within
    - (i) 3 months after the voting deadline, or
    - (ii) any extension of that 3-month period granted by the Commission,
- (b) the Commission determines that the vote on the question has been conducted in accordance with section 11, and
- (c) the Commission determines that
  - (i) more than 50% of the producers that cast ballots, voted in favour of the question, and
  - (ii) the producers or the principal sellers, as the case may be, having more than 50% of the aggregate attributed contract quantities related to ballots that were cast, voted in favour of the question.

**(1.1)** If a vote was conducted by a shipper before the coming into force of this subsection for the purposes of section 10(2)(a) or

(b)(ii) of the Act but the shipper had not at the coming into force of this subsection applied for a finding of producer support or a determination under section 10(2)(a) or (b)(ii) of the Act, as the case may be, based on that vote, the application to the Commission for the finding or determination must be made within

- (a) the 3-month period following the date on which this subsection comes into force, or
- (b) any extension of that period granted by the Commission.

**(2)** For the purposes of a quantity vote,

- (a) the shipper shall, before the vote is conducted, file with and obtain the approval of the Commission of a method for determining the quantities of gas to be attributed to his respective producer-shipper contracts, and
- (b) each quantity vote conducted by the shipper after the approval is given shall be based on the attributed contract quantities for those contracts determined in accordance with the approved method.

**(3)** A shipper who applies for a finding or determination referred to in subsection (1) based on a vote under this section shall file with the Commission

- (a) the original or reproduced copies of all ballots received by the shipper before the application is filed, and
- (b) any other evidence required by the Commission for the purpose of enabling the Commission to determine the result of the vote.

**(4)** The Commission

- (a) may, subject to this section, make a determination under subsection (1)(b) or (c) on the basis of any evidence considered relevant by the Commission, and
- (b) may require any evidence filed by the shipper under subsection (3) to be verified by a statutory declaration made by or on behalf of the shipper.

**(4.1)** If an application is made for a finding or determination referred to in subsection (1) based on a vote under this section, the Commission may in deciding on the application waive compliance with any requirement of this section or of section 11 or 12 where the Commission is satisfied that the outcome of the vote would not have been different for the purposes of subsection (1) of this section if the requirement had been complied with.

(5) The Commission may, on request and with respect to a vote conducted pursuant to this section, do any or all of the following:

- (a) inform a producer or principal seller, as the case may be, as to how, according to the evidence filed by the shipper with the Commission, the producer or principal seller is shown as having voted;
- (b) inform a producer of
  - (i) the producer's percentage interest in an attributed contract quantity for any particular producer-shipper contract under which he is a producer, or
  - (ii) the aggregate of the producer's percentage interests in the attributed contract quantities for all producer-shipper contracts under which he is a producer,

as shown in the evidence filed by the shipper with the Commission;

- (c) in a case where the quantity vote was determined on the basis of the ballots submitted by only the principal sellers,
  - (i) inform a principal seller of the attributed contract quantity for any producer-shipper contract under which he is the principal seller,
  - (ii) inform a producer of the attributed contract quantity for any producer-shipper contract under which he is a producer but not the principal seller, or
  - (iii) inform a producer under a producer-shipper contract, other than the principal seller under the contract, as to how the principal seller voted with respect to that contract,

as shown in the evidence filed by the shipper with the Commission;

- (d) inform a producer of any other evidence filed by the shipper with the Commission if in doing so the Commission does not disclose any information related to another producer-shipper contract under which he is not a producer.

(6) Nothing in this Regulation precludes a shipper from conducting an informal poll to obtain the views of some or all of his producers in order to assist him in forecasting the result of a vote under this section if one were held.

AR 358/86 s10;31/87;278/89;313/89;264/96;108/2004

**Voting rules**

**11(1)** Subject to this section, the shipper may determine the procedures by which a vote under section 10 is conducted.

**(2)** A vote of producers under section 10 shall be conducted in accordance with the following rules:

- (a) the shipper shall send to each of the producers a notice which shall
  - (i) state the question to be voted on in such a way as to require a “yes” or “no” answer,
  - (ii) inform the producer of the relevant facts for the purpose of deciding on his ballot,
  - (iii) indicate which of the bases referred to in clause (e) is to be used in determining the quantity vote,
  - (iv) state the mode or a choice of modes by which a producer must return his ballot to the shipper, and
  - (v) specify in compliance with clause (b.2) the deadline by which a producer must submit his ballot to the shipper;
- (b) if the voting notice is sent to the producer by mail, the voting notice shall be deemed to have been received by the producer
  - (i) on the 7th day from the date of mailing if the voting notice is mailed to an address in Alberta, or
  - (ii) on the 14th day from the date of mailing if the voting notice is mailed to an address outside Alberta;
- (b.1) the only producers entitled to vote are those who are parties to netback agreements with the shipper at the time of the voting deadline;
- (b.2) the voting deadline in a voting notice shall be a time on a date sufficiently into the future to provide a period within which to submit ballots that is at least 5 business days after
  - (i) the date on which the last of the voting notices are received by the producers, where they are sent to them otherwise than by mail, or
  - (ii) the date on which the last of the producers is deemed under clause (b) to have received the voting notice,

where all or any of the voting notices are sent to them by mail;

- (c) subject to clauses (d) and (e),
  - (i) each producer is entitled to submit 1 ballot only, regardless of the number of producer-shipper contracts to which he is a party, and
  - (ii) a single “yes” or “no” ballot of a producer is a “yes” or “no” ballot, as the case may be, both for the purposes of the number vote and the quantity vote with respect to the producer’s percentage interests in the attributed contract quantities for all producer-shipper contracts under which he is a producer;
- (d) a producer or principal seller, as the case may be, may
  - (i) cast a ballot for the purposes of the number vote separately from his ballot or ballots for the purposes of the quantity vote,
  - (ii) cast differing ballots for the purposes of the quantity vote with respect to different producer-shipper contracts, and
  - (iii) revoke a ballot cast by him before the voting deadline and replace it with a different ballot at any time before the submission of an application by the shipper to the Commission for the finding or determination, as the case may be;
- (e) a quantity vote shall be determined on the basis of
  - (i) the ballots submitted by the producers under the producer-shipper contracts, or
  - (ii) the ballots submitted by only the principal sellers under the producer-shipper contracts,whichever basis is indicated in the voting notice;
- (f) for the purposes of section 10(1)(c),
  - (i) only ballots that are cast by the voting deadline, other than ballots revoked or replaced pursuant to section 11(2)(d)(iii), and
  - (ii) only ballots that indicate either an unconditional ‘yes’ or an unconditional ‘no’

shall be counted as cast ballots.

- (g) repealed AR 264/96 s4.

AR 358/86 s11;278/89;313/89;264/96

### **Consolidated gas purchase contracts**

**12(1)** In this section,

- (a) “Consolidated” means Consolidated Natural Gas Limited;
- (b) “Consolidated gas purchase contract” means a contract for the sale and delivery of gas to Consolidated, that is listed in the 1972 Consolidated-TCPL Agreement, has been amended by an agreement dated October 23, 1986, and is made among Consolidated, the seller of the gas and TCPL;
- (c) “Consolidated producer” means the seller under a Consolidated gas purchase contract;
- (d) “1972 Consolidated-TCPL Agreement” means the agreement for the sale of gas dated May 23, 1972 and made between Consolidated as seller and TCPL as buyer, as amended from time to time;
- (e) “TCPL” means TransCanada PipeLines Limited;
- (f) “TCPL gas purchase contract” means a producer-shipper contract under which TCPL is the shipper;
- (g) “TCPL producer” means a producer under a TCPL gas purchase contract.

**(2)** In determining what constitutes the minimum degree of producer support of TCPL producers in relation to any netback gas for the purposes of section 10 of the Act on the basis of a vote under this Part,

- (a) the Consolidated producers shall be deemed to be TCPL producers, and
- (b) the Consolidated gas purchase contracts shall be deemed to be TCPL gas purchase contracts.

**(3)** In the case of a vote to which subsection (2) applies, Consolidated

- (a) is responsible for the conduct of the vote of the Consolidated producers and for determining the procedures by which the vote of those producers is conducted, and

- (b) shall furnish to TCPL any evidence that is related to the conduct of the vote and is required by TCPL for the purposes of TCPL's application for a finding of producer support.

(4) If the Commission, on the basis of a vote to which subsection (2) applies, issues a finding of producer support in relation to netback gas delivered by TCPL producers and Consolidated producers, Consolidated shall be deemed to have obtained the prescribed minimum degree of support under section 10 of the Act in relation to netback gas purchased by it under the Consolidated gas purchase contracts and resold to TCPL.

AR 358/86 s12;31/87;108/2004

### **Deemed producer support**

#### **13(1) If**

- (a) netback gas is resold and delivered after October, 1986 pursuant to a downstream contract,
- (b) the Commission determines that
  - (i) the shipper commenced the conduct of a vote of the producers of the netback gas prior to November 15, 1986 related to the price payable under the downstream contract,
  - (ii) the vote was conducted substantially in accordance with guidelines issued by the Commission with respect to determinations under section 2.2(1)(c) and (2)(c) and section 2.3(1)(b) of the *Natural Gas Pricing Agreement Regulations* (Alta. Reg. 127/77), and
  - (iii) the result of the vote was sufficiently favourable for the purposes of those guidelines,

and

- (c) the shipper applies to the Commission for the determination under clause (b) on or before December 15, 1986,

the shipper shall be deemed to have obtained the prescribed minimum degree of support of the producers of that netback gas for the purposes of section 10 of the Act.

(2) Where subsection (1) applies to any netback gas, the finding of producer support in relation to that netback gas may be made effective as of any date not earlier than November 1, 1986.

AR 358/86 s13;108/2004

**Finding based on resale authorization provision**

**14(1)** In this section, “resale authorization provision”, in relation to netback gas to be resold by a shipper, means a provision in a producer-shipper contract that expressly authorizes the shipper to resell the netback gas

- (a) at a specified price,
- (b) at or above a minimum price,
- (c) at a price determined in accordance with a specified formula or method for the determination of the price, or
- (d) at any price to be negotiated by the shipper.

**(2)** If a shipper submits to the Commission a form of producer-shipper contract under which he is the shipper and the form of the contract contains a provision adjudged by the Commission to be a resale authorization provision, the shipper is deemed for the purposes of section 10(2)(a) of the Act to have obtained the prescribed minimum degree of support of those producers who at the time of the adjudication are, or later become, parties to producer shipper contracts substantially in the form submitted, for the resale of netback gas to which the resale authorization provision relates.

**(3)** If a shipper is deemed under subsection (2) to have obtained the prescribed minimum degree of support of producers for the resale of netback gas, a vote is not needed under section 10 in respect of the resale of that netback gas.

**(4)** If a finding of producer support is issued as a result of a determination under section 10(2)(a) of the Act based on deemed producer support under subsection (2) of this section, the finding ceases to apply to each producer-shipper contract to which it relates on the effective date of any contract between the shipper and the producer that

- (a) amends the resale authorization provision, or
- (b) affects the resale authorization provision or the operation of that provision.

AR 358/86 s14;31/87;313/89;108/2004

**Finding based on arbitration authorization provision**

**14.1(1)** In this section, “arbitration authorization provision”, in relation to netback gas to be resold by a shipper, means a provision in a producer-shipper contract under which the producer expressly agrees to

- (a) the resale of the netback gas under a downstream contract at any price determined by arbitration conducted pursuant to that downstream contract, or
- (b) the method of conducting an arbitration under a downstream contract for the determination of the price of netback gas to be resold by the shipper under that contract or the formula or method to be used to calculate the price at which the gas is to be resold, the procedures for the arbitration and the criteria or guidelines to be followed by the person conducting the arbitration.

(2) If a shipper submits to the Commission a form of producer-shipper contract under which he is the shipper and the form of the contract contains a provision adjudged by the Commission to be an arbitration authorization provision, the shipper is deemed for the purposes of section 10(2)(b)(ii) of the Act to have obtained the prescribed minimum degree of support of those producers who at the time of the adjudication are, or later become, parties to producer-shipper contracts in the form submitted, for

- (a) the method of conducting an arbitration under a downstream contract for the determination of the price of netback gas to be resold by the shipper under that downstream contract or the formula or method to be used to calculate the price at which the gas is to be resold,
- (b) the procedures for the arbitration, and
- (c) the criteria or guidelines to be followed by the person conducting the arbitration,

in respect of arbitrations under those downstream contracts to which the arbitration authorization provision relates.

(3) If a shipper is deemed under subsection (2) to have obtained the prescribed minimum degree of support of producers for the matters described in that subsection, a vote is not needed under section 10 in respect of those matters.

(4) If determination under section 10(2)(b)(ii) of the Act is based on deemed producer support under subsection (2) of this section, the determination ceases to apply to each producer-shipper contract to which it relates on the effective date of any contract between the shipper and the producer that

- (a) amends the arbitration authorization provision, or

- (b) affects the arbitration authorization provision or the operation of that provision.

AR 313/89 s5;108/2004

**14.2** Repealed AR 108/2004 s23(15).

**Maximum penalty**

**15** For the purposes of section 11(1) of the Act, the maximum penalty that may be imposed by the Commission is \$1 per gigajoule.

AR 358/86 s15;108/2004

**Distribution of penalty proceeds**

**16** Penalties recovered by the Commission under Part 2 of the Act shall be distributed by the Commission, as far as it is practicable to do so, among those producers of the netback gas in respect of which the contravention of section 10(1) of the Act occurred and in a manner that the Commission considers equitable.

AR 358/86 s16;108/2004

**Exemption from Part 2 of the Act**

**17** Netback gas is exempted from operation of section 10 of the Act if the gas is resold pursuant to a downstream contract under which deliveries commenced before November, 1986, but the exemption ceases on the effective date of any agreement between the shipper and the buyer under the downstream contract that affects the price payable for the gas under the downstream contract, the quantity of gas to be delivered under the contract or the duration of the term of the contract.

AR 358/86 s17;263/91;108/2004

**Exemption based on consent to previous findings**

**17.1** Netback gas sold by a producer to a shipper in accordance with a netback agreement to which they are parties is exempted from the operation of section 10 of the Act if

- (a) the shipper is authorized to resell netback gas delivered to him by other producers by reason of a finding of producer support based on a vote conducted under this Part,
- (b) the producer was not entitled to vote at the time the vote was conducted,
- (c) the producer consents in writing to the resale, in accordance with the finding of producer support, of the netback gas delivered by him to the shipper, and

- (d) the netback gas delivered to the shipper by that producer is resold by the shipper in accordance with the finding of producer support.

AR 313/89 s6;263/91;108/2004

#### **Exemption based on AUC pricing orders**

**17.2** Netback gas is exempted from the operation of section 10 of the Act if the gas is delivered in Alberta for resale to another person under a downstream contract and the price, or the basis or method for computing the price, of the gas delivered under that contract is determined by the Alberta Utilities Commission pursuant to the *Gas Utilities Act*.

AR 313/89 s6;263/91;108/2004;254/2007

#### **Exemption in special circumstances**

**17.3** If the Commission determines that special circumstances warrant the exemption, the Commission may, with or without conditions, exempt from the operation of section 10 of the Act any netback gas resold by a shipper during a specified period following the expiration of a finding of producer support issued to that shipper.

AR 263/91 s4;108/2004

#### **Fees**

**17.4** The Commission may prescribe fees for

- (a) the filing with or submission to the Commission of anything pursuant to this Part, or
- (b) any service provided by the Commission under this Part or under Part 2 of the Act.

AR 390/94 s2

## **Part 3 Records and Information**

#### **Interpretation and application**

**18(1)** In this Part,

- (a) “buy-sell arrangement” means a contract or arrangement under which a distributor purchases, from an end user or from an end user and the end user’s agent and during a specified period, marketable gas in a quantity that is expected to not exceed the quantity of marketable gas the distributor is obligated to deliver during the same period to the end user pursuant to that contract or arrangement or

by reason of a duty to supply gas to that end user under the *Gas Utilities Act*;

- (b) “distributor” means a person designated as a distributor for the purposes of this Regulation pursuant to subsection (5);
- (c) “end user”, in relation to any marketable gas, means the person who uses or will use the marketable gas;
- (d) “field location” means a receipt meter station of a gas transmission pipeline but does not include a receipt meter station
  - (i) at an interconnection within a gas transmission pipeline or between gas transmission pipelines, or
  - (ii) at a gas storage facility;
- (e) “gas contract” includes any agreement or arrangement under which the ownership of gas is transferred for no consideration or a consideration that is wholly or partly something other than money, and “buy”, “buyer”, “purchase”, “sale”, “sell” and “seller” have corresponding meanings in relation to such an agreement or arrangement;
- (f) “gas transmission pipeline” means
  - (i) a pipeline operated by NOVA Gas Transmission Ltd., or
  - (ii) any other pipeline in Alberta designated by the Commission as a gas transmission pipeline for the purposes of this Part;
- (g) “large-volume end-use facility” means a plant or other facility capable of using at least 100 000 gigajoules of marketable gas annually;
- (h) “mainline straddle plant” means a plant for the extraction of ethane and other hydrocarbons and designated by the Commission as a mainline straddle plant for the purposes of this Regulation;
- (i) “produce”, in relation to any marketable gas, means
  - (i) to recover the marketable gas from a well, if the gas is marketable gas at the time it is so recovered, or
  - (ii) to obtain marketable gas by the processing of gas, in any other case;

- (j) “producer” means the person who is the owner of marketable gas at the time it is produced.
- (2) For the purposes of this Part, marketable gas is “used” if
- (a) it is consumed as a fuel otherwise than in the operation of
    - (i) a pipeline,
    - (ii) a gas processing plant as defined in the *Natural Gas Royalty Regulation, 1994* (Alta. Reg. 351/93), or
    - (iii) a plant, other than a mainline straddle plant, that reprocesses marketable gas for the purpose of extracting ethane and other hydrocarbons,
  - (b) it is used as a raw material in any industrial or manufacturing operation, or
  - (c) heat content is removed from it as a result of processing it at a mainline straddle plant.
- (3) The Commission may
- (a) by a general direction determine the circumstances in which persons are considered to be associated with each other for the purposes of this Part, or
  - (b) by a special direction determine that persons are associated with each other or not associated with each other for the purposes of this Part notwithstanding a general direction under clause (a).
- (4) Persons are associated with each other for the purposes of this Part if they are associated with each other by reason of a general or special direction under subsection (3).
- (5) The Commission
- (a) may designate a person who distributes marketable gas in Alberta as a distributor for the purposes of this Regulation, and
  - (b) on making a designation under clause (a) shall forthwith give written notice of the designation to the person so designated.

(6) Information contained in a report or statement furnished to the Commission under this Part by any person shall be considered inaccurate for the purposes of this Part only if the information is not in accordance with the records kept by that person pursuant to section 27.

AR 358/86 s18;25/96

### Monthly reports

**19(1)** If a buyer purchases marketable gas under a gas contract and takes delivery of the marketable gas in Alberta in January, 1994 or any subsequent month at one or more field locations, the buyer shall, in accordance with this Part, furnish to the Commission a report relating to the marketable gas delivered to that buyer in that month.

(2) If in any month a person uses marketable gas at a large-volume end-use facility and all or any portion of the gas is acquired otherwise than from a distributor, that person shall, in accordance with this Part, furnish a report to the Commission relating to

- (a) the marketable gas so used in the month, and
- (b) where the marketable gas is used within the meaning of section 18(2)(c), the quantity of the heat content removed from the marketable gas in the month.

(3) A distributor shall, in accordance with this Part, furnish to the Commission in respect of October, 1993 and each subsequent month

- (a) a report relating to marketable gas purchased or produced by the distributor in each month and sold by that distributor in that month for residential, commercial and industrial consumption respectively;
- (b) a report relating to marketable gas sold by the distributor in that month for delivery to large-volume end-use facilities;
- (c) a report relating to purchases of marketable gas by the distributor in that month from persons not associated with the distributor;
- (d) a report relating to marketable gas purchased by the distributor in that month under a buy-sell arrangement to which the distributor is a party.

(4) Where marketable gas is sold to a distributor in a month pursuant to a buy-sell arrangement,

- (a) the person who is the agent of the end user for purposes related to the buy-sell arrangement and who, in that capacity,
  - (i) is a co-seller under the arrangement, or
  - (ii) arranges for all or part of the gas supply to be sold by the end user to the distributor under the arrangement and receives and handles the sale proceeds of the gas sold under the arrangement,

or

- (b) the end user under the arrangement, in any other case,

shall, in accordance with this Part, furnish to the Commission a report relating to

- (c) the quantities of marketable gas sold to the distributor in that month pursuant to the buy-sell arrangement, and
- (d) the quantities of marketable gas purchased by the end user or the end user's agent, or both, in that month from persons not associated with the end user and resold to the distributor pursuant to the buy-sell arrangement.

**(5)** If marketable gas is removed from Alberta in October, 1993 or any subsequent month, other than marketable gas to which subsection (5.1) applies, the owner of the gas at the point of its removal from Alberta shall, in accordance with this Part, furnish to the Commission

- (a) a report relating to the quantities of the owner's marketable gas removed from Alberta in that month for delivery to purchasers not associated with that owner;
- (b) a report relating to the quantities of the owner's marketable gas removed from Alberta in that month other than quantities required to be reported under clause (a);
- (c) a report relating to the quantities of the owner's marketable gas removed from Alberta in that month.

**(5.1)** If marketable gas is removed from Alberta in October, 2002 or any subsequent month by a person who owns the gas at the point of its removal from Alberta and removes it for the purpose of distributing it through one or more gas utility distribution systems outside Alberta owned and operated by that person, that person shall, in accordance with this Part, furnish to the Commission

- (a) a report relating to the quantities of that person's marketable gas removed from Alberta in that month for

distribution and that were purchased in Alberta from sellers not associated with that person;

- (b) a report relating to the quantities of that person's marketable gas removed from Alberta in that month for distribution and that were acquired in Alberta but not required to be reported under clause (a);
- (c) a report relating to the quantities of that person's marketable gas removed from Alberta in that month for distribution.

**(6)** If gas is imported into Alberta in November, 1986 or in any subsequent month, the person who is the owner of that gas at the time of its importation shall, in accordance with this Part, furnish to the Commission a report relating to the gas imported into Alberta in that month and the sale, use, storage or other disposition of the gas in Alberta.

**(6.1)** If gas is processed at a mainline straddle plant in October, 2002 or any subsequent month, the operator of the mainline straddle plant shall furnish to the Commission a report relating to

- (a) the removal of heat content from the gas processed at that mainline straddle plant in that month, and
- (b) the products obtained by processing gas at that mainline straddle plant in that month.

**(7)** If a person has furnished a report to the Commission under this section with respect to a month and that person becomes aware that the information in the report is incorrect, that person shall furnish to the Commission an amended report for that month containing the corrected information forthwith.

**(8)** A report furnished under this section in respect of a month shall reflect,

- (a) in the case of marketable gas sold under a gas contract, all adjustments made in that month to the quantities delivered under the contract in any previous month or months or to the prices payable for quantities delivered under the contract in any previous month or months, and
- (b) in the case of any other marketable gas, all adjustments made with respect to the quantities delivered in any previous month or months.

**(9)** A report furnished pursuant to this section

- (a) must be in a form prescribed or approved by the Commission,
- (a.1) must be furnished in the medium or by the mode prescribed or approved by the Commission,
- (b) must be completed in accordance with directions or instructions referred to in subsection (10), and
- (c) except in the case of a report furnished under subsection (6.1), must be accompanied by a transmittal document that
  - (i) is in a form prescribed by the Commission,
  - (ii) is signed by or on behalf of the person furnishing the report and is the original of the document, unless the Commission has given prior consent to the submission of the transmittal document in some other medium or by some other mode,
  - (iii) sufficiently identifies the person furnishing the report, and
  - (iv) is completed in accordance with directions or instructions referred to in subsection (10).

**(10)** A report required to be furnished under this section and a transmittal document required to accompany the report

- (a) must contain all the information required by, and
- (b) must be completed in accordance with,

any general directions given by the Commission or any instructions shown in the prescribed form of the report or transmittal document.

**(11)** A report required to be furnished under this section in respect of a month shall be furnished to the Commission not later than

- (a) the last day of the next succeeding month, or
- (b) if the time for furnishing the report is extended pursuant to subsection (12)(b), the expiration of the extended period.

**(12)** The Commission may by a general or special direction

- (a) exempt any person or class of persons from any provision of this section, or

- (b) extend the time limited by subsection (11)(a) for the furnishing of a report under this section in respect of any month.

AR 358/86 s19;25/96;221/2002

**Automatic penalties related to section 19 reports**

**20(1)** If a person

- (a) is required to furnish to the Commission a report under section 19 relating to February, 1996 or any subsequent month, and
- (b) fails to furnish the report to the Commission before the deadline referred to in section 19(11),

that person is liable to pay to the Commission a penalty of \$1000 and an additional penalty of \$1000 for all or part of each subsequent month during which the failure continues.

**(2)** For the purposes of subsection (1), a person has failed to furnish a report to the Commission, whether before or after the deadline referred to in section 19(11), if

- (a) the report or the transmittal document required to accompany the report is not received by the Commission,
- (b) the report received by the Commission
  - (i) is not in a form prescribed by or approved by the Commission,
  - (ii) is not accompanied by a transmittal document that complies with section 19(9)(c)(i) to (iv), or
  - (iii) is not furnished in the medium or by the mode prescribed or approved by the Commission,

or

- (c) the report or transmittal document received by the Commission is not completed in accordance with directions or instructions referred to in section 19(10).

**(3)** Where the Commission

- (a) determines that a person was required to but failed to furnish a report pursuant to a particular provision of section 19 in respect of one or more months in the period commencing with February, 1996,

- (b) determines that the person had failed to furnish the report or reports pursuant to that provision of section 19 by reason of never having been previously aware of the requirement to furnish reports under that provision, and
- (c) determines the month in which that person first became aware of the requirement to furnish reports under that provision (in this subsection called the “first awareness month”),

the aggregate of the penalties imposed on that person by subsection (1) for the failure to furnish the report or reports under that provision in respect of months preceding the first awareness month shall not exceed \$10 000.

(4) Subject to subsection (5), the Commission may, on application, waive a penalty imposed by subsection (1) on being satisfied

- (a) that the person required to furnish the report failed to furnish it in accordance with subsection (1) by reason of
  - (i) circumstances beyond that person’s control,
  - (ii) circumstances that the person could not have reasonably foreseen, or
  - (iii) the person being unaware of the requirement to furnish the report,

and

- (b) that, having regard to all the circumstances of the case, the person furnished the report within a reasonable time after the deadline for furnishing it.

(5) An application for a waiver under subsection (4) must be filed with the Commission not later than 30 days after the date of the invoice issued by the Commission for the penalty sought to be waived.

(6) Repealed AR 185/98 s2.

AR 358/86 s20;25/96;185/98;221/2002

#### **Discretionary penalties related to section 19 reports**

**21(1)** Where a person furnishes to the Commission a report under section 19 relating to February, 1996 or any subsequent month, the Commission may, subject to subsections (2) to (4), impose on that person a penalty in respect of that report not exceeding \$10 000 if

- (a) the information required to be contained in the report is incomplete,

- (b) information contained in the report is inaccurate, or
- (c) the information required to be contained in a transmittal document accompanying the report is incomplete or inaccurate.

(2) Where penalties are imposed on a person under subsection (1) with respect to reports required to be furnished by that person under section 19 in respect of the same month, the aggregate of the penalties imposed on that person under that subsection in respect of all of the reports relating to that month shall not exceed \$25 000.

(3) In deciding on whether to impose a penalty on a person under subsection (1) or in deciding on the amount of a penalty to be imposed on a person under subsection (1), the Commission shall have regard to at least the following:

- (a) the representations by that person as to liability for the penalty or as to its amount;
- (b) whether that person made all reasonable efforts to comply with the requirements that gave rise to the Commission's consideration of whether to impose the penalty;
- (c) the magnitude of the quantities or amounts omitted from the report or not furnished under any report or the extent of the inaccuracy of the information in the report or transmittal document, as the case may be;
- (d) the impact of the unreported, omitted or inaccurate information on the Commission's determination, at the Minister's request, of an amount per gigajoule to be prescribed by the Minister as a Gas Reference Price for a month pursuant to section 6(1) of the *Natural Gas Royalty Regulation, 1994* (Alta. Reg. 351/93) or section 6(1) of the *Natural Gas Royalty Regulation, 2002*;
- (e) the number of occasions on which that person was informed by the Commission of any of the circumstances referred to in subsection (1)(a), (b) or (c) in relation to reports that were required to be furnished or that were previously furnished under section 19 by that person but in respect of which no penalty was then imposed under subsection (1);
- (f) the number and amounts of penalties previously imposed by or pursuant to this section on that person.

(4) Where the Commission determines that

- (a) a person is liable under subsection (1) for penalties in respect of reports furnished under a particular provision of section 19 and relating to any 4 or more months occurring after January, 1996,
- (b) there is a consistent similarity in the nature of the incompleteness or inaccuracies in the reports or the transmittal documents accompanying them, as the case may be, that gave rise to the liability, and
- (c) the person had not been advised in writing by the Commission prior to the furnishing of the last of the reports of the incompleteness or inaccuracies and how to prepare future reports of that kind, or the transmittal documents accompanying them, as the case may be, in order to make them complete and accurate,

the aggregate of the penalties referred to in clause (a) and imposed on that person shall not exceed \$30 000.

AR 358/86 s21;25/96;221/2002

#### **Penalty invoice**

**22** Where a penalty is imposed on a person by or pursuant to section 20 or 21, the Commission shall send to that person an invoice for the penalty and inform that person of the reasons for its imposition and the deadline by which payment of the penalty must be received by the Commission.

AR 358/86 s22;25/96

#### **Information statements**

**23(1)** The Commission may direct any person to furnish to the Commission a statement or series of monthly statements containing information relating to

- (a) the production, transportation, sale, purchase, distribution, use or other disposition of marketable gas in Alberta,
- (b) the removal of marketable gas from Alberta or the sale, use, storage or other disposition of that marketable gas outside Alberta,
- (c) sales of marketable gas occurring at or near the point at the Alberta border where the gas is removed from Alberta, or
- (d) the importation of gas into Alberta or the sale, use, storage or other disposition of that gas in Alberta.

**(2)** A direction given under subsection (1)

- (a) may specify the month or period of months to which the statement must relate and shall specify the deadline by which the statement must be furnished;
- (b) if it requires the furnishing of a series of monthly statements, must specify the deadlines by which the respective statements must be furnished;
- (c) may require that a statement
  - (i) be in a form prescribed or approved by the Commission,
  - (ii) be completed in accordance with any instructions contained in the direction,
  - (iii) be verified in the manner provided for in the direction, or
  - (iv) be furnished in the medium or by the mode provided for in the direction.

**(3)** A person to whom a direction is given under subsection (1) shall comply with the direction.

**(4)** If a person

- (a) is given a direction under subsection (1) after the coming into force of this subsection, and
- (b) fails to furnish a statement required by the direction by the deadline specified in the direction,

that person is liable to pay to the Commission a penalty of \$1000 and an additional penalty of \$1000 for all or part of each subsequent month during which the failure continues.

**(5)** For the purpose of subsection (4), a person has failed to furnish a statement to the Commission, whether before or after the deadline specified in the direction, if

- (a) the statement is not received in the offices of the Commission, or
- (b) the statement received by the Commission
  - (i) is not in a form prescribed or approved by the Commission, if that requirement is specified in the direction,
  - (ii) is not completed in accordance with instructions contained in the direction,

- (iii) is not verified in the manner provided for in the direction, if the direction contains a requirement of that kind, or
- (iv) is not furnished in the medium or by the mode provided for in the direction.

**(6)** Subject to subsection (7), the Commission may waive a penalty imposed by subsection (4) on being satisfied

- (a) that the person required to furnish the statement failed to furnish it in accordance with subsection (4) by reason of
  - (i) circumstances beyond that person's control,
  - (ii) circumstances that the person could not have reasonably foreseen, or
  - (iii) the person being unaware of the requirement to furnish the statement,

and

- (b) that, having regard to all the circumstances of the case, the person furnished the statement within a reasonable time after the deadline for furnishing it.

**(7)** An application for a waiver under subsection (6) must be filed with the Commission not later than 30 days after the date of the invoice issued by the Commission for the penalty sought to be waived.

**(8)** Repealed AR 185/98 s3.

**(9)** Where a person furnishes a statement pursuant to a direction given to that person under subsection (1) after the coming into force of this subsection, the Commission may impose on that person a penalty not exceeding \$25 000 if

- (a) the information required to be contained in the statement is incomplete, or
- (b) information contained in the statement is inaccurate.

**(10)** Where a person fails to furnish a statement pursuant to a direction given under subsection (1) after the coming into force of this subsection and the Commission has not given an approval to that person under section 25(a) relating to compliance with the direction, but the Commission nevertheless considers it necessary in the circumstances to conduct an audit or examination of that person's records for the purpose of obtaining the information that should have been furnished in the statement,

- (a) no further penalties may be imposed under subsection (4) in relation to the failure to furnish the statement with respect to any period following the commencement of the Commission's audit or examination, and
- (b) the Commission may impose on that person a further penalty for the failure to furnish the statement in an amount not exceeding the difference between the aggregate of the penalties imposed under subsection (4) and \$25 000.

**(11)** Where a penalty is imposed on a person by or pursuant to this section, the Commission shall send to that person an invoice for the penalty and inform that person of the reason for its imposition and the deadline by which payment of the penalty must be received by the Commission.

AR 358/86 s23;25/96;185/98;221/2002

#### **Appeals respecting penalties**

**24(1)** Subject to this section, a person on whom a penalty is imposed by or pursuant to this Part may file with the Commission a notice of appeal to the Minister respecting

- (a) that person's liability for a penalty imposed by section 20 or 23(4),
- (b) that person's liability for a penalty imposed pursuant to section 21 or 23(9) or (10) or the amount of that penalty, or
- (c) the Commission's refusal to grant a penalty waiver pursuant to section 20(4) or 23(6).

**(2)** On considering an appeal under this section, the Minister may, as the case requires,

- (a) confirm the penalty,
- (b) revoke the penalty on the ground that the appellant was not liable for it,
- (c) reduce the amount of a penalty imposed pursuant to section 21 or 23(9) or (10), or
- (d) grant any penalty waiver pursuant to section 20(4) or 23(6) that the Commission could have granted.

**(3)** The Commission may establish general directions respecting the commencement of appeals under this section and the procedures for the conduct of those appeals.

AR 358/86 s24;25/96

**Alternative manner of compliance**

**25** With the approval of the Commission, a person may comply with

- (a) a direction given to that person pursuant to section 23, or
- (b) a notice given to that person under section 15 of the Act,

by permitting any employee or agent of the Commission designated by the Commission to examine and audit that person's records, and to take away that person's records for further examination and copying, for the purpose of enabling the Commission to obtain the information that would otherwise be obtained if that person complied with the direction or notice, as the case may be.

AR 358/86 s25;25/96;108/2004

**Communication of confidential information**

**26(1)** Information obtained by the Commission under this Regulation and information contained in returns obtained by the Commission under section 15 of the Act may be communicated, disclosed or made available to a person employed in the Department or acting on behalf of the Minister for the purpose of

- (a) evaluating, formulating or administering any policy or program of the Department, or
- (b) administering any enactment under the administration of the Minister.

**(2)** Information obtained by the Commission under this Regulation and information contained in returns obtained by the Commission under section 15 of the Act may be provided or published by the Commission or the Minister in summarized or statistical form if the information is provided or published in such a manner that it is not possible to relate the information to any particular identifiable person, gas contract, well, pipeline, or facility at which gas is used or stored inside or outside Alberta.

**(3)** Information obtained by the Commission under this Regulation and information contained in returns obtained by the Commission under section 15 of the Act may be communicated, disclosed or otherwise made available to a department or agency of the Government of Alberta if

- (a) the information is communicated, disclosed or made available pursuant to an agreement made between the Commission and that department or agency,
- (b) the agreement is approved by the Minister,

- (c) the agreement provides that the information obtained by that department or agency pursuant to the agreement is to be held by it in confidence and is not to be further communicated, disclosed or made available, and
  - (d) the information is in the form provided for in the agreement and is to be used by that department or agency only in accordance with the agreement.
- (4)** Information obtained by the Commission under this Regulation and information contained in returns obtained by the Commission under section 15 of the Act may be communicated, disclosed or otherwise made available to a department or agency of the Government of Canada or of a province if
- (a) the information is communicated, disclosed or made available pursuant to an agreement made between the Commission and that department or agency,
  - (b) the agreement is approved by the Minister,
  - (c) the agreement provides that the information obtained by that department or agency pursuant to the agreement is to be held by it in confidence and is not to be further communicated, disclosed or made available,
  - (d) the information is in the form provided for in the agreement and is used by the department or agency only in accordance with the terms and conditions of the agreement, and
  - (e) where it is possible to relate the information to any particular identifiable person, gas contract, well, pipeline, or facility at which gas is used or stored inside or outside Alberta, the person who provided the information to the Commission consents to the communication or disclosure of the information or to its being made available.
- (5)** Information obtained by the Commission under this Part may be communicated, disclosed or otherwise made available to an independent auditor appointed under a contract or arrangement entered into by the Minister pursuant to section 27 of the *Natural Gas Royalty Regulation, 1994* (Alta. Reg. 351/93) if the information is communicated, disclosed or made available in accordance with the contract or arrangement.
- (6)** Information obtained from the Commission by an auditor pursuant to subsection (5)
- (a) must be held by the auditor in confidence and must not be further communicated, disclosed or made available by the

auditor in any circumstances where it is possible to relate that information to any particular identifiable person, gas contract, well, pipeline, or facility at which marketable gas is used or stored inside or outside Alberta, and

- (b) subject to clause (a), may be used by the auditor for the purposes of preparing a report to the organization or organizations that appointed the auditor if the information is used in accordance with that contract or arrangement.

(7) The Commission may classify types of information obtained under this Part as non-confidential and may authorize the release to the public of information classified as non-confidential.

AR 358/86 s26;25/96;156/2001;108/2004

### **Retention of records**

**27(1)** A person who, during November, 1986 or any subsequent month,

- (a) buys, sells, takes delivery of or delivers marketable gas in Alberta under a gas contract,
- (b) produces marketable gas in Alberta,
- (c) transports marketable gas in Alberta or has marketable gas transported in Alberta for that person's account,
- (d) distributes marketable gas in Alberta,
- (e) uses in Alberta marketable gas purchased otherwise than from a distributor,
- (f) removes marketable gas from Alberta, or
- (g) imports gas into Alberta,

shall keep that person's records relating to the purchase, sale, delivery, production, transportation, distribution, use, removal or importation, as the case may be, occurring in that month for a period of at least 5 years after the end of that month.

(2) A person who removes marketable gas from Alberta in November, 1986 or in any subsequent month, and the person who is the owner of that marketable gas at the time of its removal, shall keep their respective records relating to the transportation, sale, use, storage or other disposition of that marketable gas outside Alberta for a period of at least 5 years after that marketable gas was removed from Alberta.

(3) A person who imports gas into Alberta in November, 1986 or in any subsequent month, and the person who is the owner of that

gas at the time of its importation, shall keep their respective records relating to the sale, use, storage or other disposition of that gas in Alberta for a period of at least 5 years after that gas was imported into Alberta.

**(3.1)** A person who operates a mainline straddle plant in Alberta during October, 2002 or any subsequent month shall keep that person's records relating to

- (a) the quantity of heat content removed from the gas processed at that plant in that month, and
- (b) the products obtained by processing gas at that plant in that month,

and shall keep those records for a period of at least 5 years after the end of that month.

**(4)** The records required to be kept by a person referred to in subsection (1), (2), (3) or (3.1) are the records that come into the possession of that person or that person's agents.

**(4.1)** A person required to keep records under this section shall keep those records

- (a) at the person's place of business in Alberta, or
- (b) subject to any terms and conditions the Commission may impose, at a place in Alberta or elsewhere approved in writing by the Commission.

**(5)** Notwithstanding subsections (1) to (3.1), the Commission may, with respect to any particular records mentioned in any of those subsections,

- (a) consent to their destruction before the end of the 5-year period that applies to them, or
- (b) by a written direction served personally or by registered mail, require any person to keep those records for any longer period prescribed in the direction.

AR 358/86 s27;25/96;221/2002

## **Part 4 General**

### **Appeals to the Court of Appeal**

**28(1)** Permission to appeal to the Court of Appeal under section 23 of the Act shall be obtained from a judge of the Court of Appeal

- (a) on application made within one month after the making of the decision sought to be appealed from, or within a further time that the judge under special circumstances allows, and
  - (b) on notice to the parties affected by the appeal and to the Commission.
- (2) If the permission of the Court is obtained, the Registrar of the Court shall set the appeal down for hearing at the next sittings.
- (3) The party appealing shall, within 10 days after the appeal is set down, give to the parties affected by the appeal, and to the Commission, notice in writing that the appeal has been set down for hearing.
- (4) On the hearing of the appeal,
- (a) no evidence other than the evidence that was submitted to the Commission on the making of the decision appealed from shall be admitted, and
  - (b) the Court of Appeal shall proceed either to confirm, vary or set aside the decision appealed from and, if the decision is set aside, shall refer the matter back to the Commission for further consideration and redetermination.
- (5) On the hearing of the appeal, the Court may draw all inferences that are not inconsistent with the facts expressly found by the Commission and that are necessary for determining the question of jurisdiction or of law, as the case may be, and shall certify its opinion to the Commission.
- (6) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an appeal.
- (7) Neither the Commission nor any member of the Commission is in any case liable for costs by reason or in respect of an appeal or application.

AR 358/86 s28;25/96;108/2004;85/2016

### **Expiry**

**29** For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on June 30, 2030.

AR 56/2015 s3;172/2020

## Schedule

### Standard Method of Conversion of Volumetric Measurements of Gas to Gigajoules

**1** In this Schedule,

- (a) “component analysis” means an analysis of a sample of gas to determine the respective volumes and quantities of in-stream components of the gas;
- (a.1) “cubic metre of gas” means the volume of gas which, when dry and at standard temperature and under standard pressure, will fill a space of 1 cubic metre;
- (b) “gross or higher heating value” means, for the purposes of section 3(1)(a), the total joules obtained by the complete combustion of 1 cubic metre of gas and air under conditions where
  - (i) the combination reaction is at constant standard pressure,
  - (ii) the gas, including acid gas components, is free of all water vapour,
  - (iii) the temperature of the gas, air and products of combustion are at standard temperature, and
  - (iv) all water formed by the combustion reaction is condensed to a liquid state;
- (c) “heat content” means the total amount of heat contained in a gas stream including the sensible heat and latent heat of condensation;
- (c.1) “in-stream component” means a component of gas including, without limitation, methane, ethane, propane, butanes, pentanes plus, carbon dioxide, hydrogen, hydrogen sulphide, helium and nitrogen;
- (d) “standard pressure” means the absolute pressure of 101.325 kilopascals;
- (e) “standard temperature” means 15 degrees Celsius.

**2** In any document submitted to the Commission under the Act or this Regulation,

- (a) volumes of gas shall be expressed in thousands of cubic metres of gas to the nearest tenth of a thousand cubic metres;
- (b) the heating value of gas shall be expressed in megajoules per cubic metre to the nearest hundredth of a megajoule per cubic metre;
- (c) quantities of gas shall be expressed as heat content in gigajoules to the nearest whole gigajoule;
- (c.1) volumes of in-stream components shall be expressed in thousands of cubic metres, to 3 decimal places;
- (c.2) quantities of in-stream components shall be expressed as heat content in gigajoules, to 3 decimal places;
- (d) prices of gas shall be expressed to the nearest thousandth of a cent per gigajoule.

**3(1)** Where the Commission requires quantities of gas to be reported in any document furnished to the Commission under the Act or this Regulation,

- (a) volumes of gas shall be converted to gigajoules by multiplying the volumes of the gas by the gross or higher heating value of the gas, and
- (b) if the gross or higher heating value used under clause (a) is calculated from a component analysis of the gas, the gross or higher heating value of the gas shall be calculated in accordance with the *Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis* (GPA Standard 2172) published from time to time by the Gas Processors Association.

**(2)** Where the Commission requires volumes or quantities of in-stream components of gas to be reported in any document furnished to the Commission under the Act or this Regulation,

- (a) the respective volumes of the in-stream components of the gas shall be determined from a component analysis of the gas,
- (b) the respective volumes of the in-stream components of the gas shall be converted to gigajoules by multiplying those volumes by the gross or higher heating value of the respective in-stream components as shown in any edition of the *Table of Physical Constants of Paraffin*

*Hydrocarbons and Other Components of Natural Gas* (GPA Standard 2145) published by the Gas Processors Association, and

- (c) the quantities of the in-stream components calculated under clause (b) shall be normalized so that the aggregate quantities of those in-stream components equal the aggregate quantities of the gas.

**4** The conditions of measurement of volume and heating value when not otherwise specified in this Schedule shall be

- (a) in accordance with the provisions of the *Electricity and Gas Inspection Act* (Canada), and
- (b) corrected for actual atmospheric pressure to the nearest 2 kilopascals.

**5** Repealed AR 221/2002 s7.

AR 358/86 Sched.:358/93;221/2002



Printed on Recycled Paper 