

**ASSEMBLY BILL**

**No. 47**

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**Introduced by Assembly Member Diaz**

May 22, 2001

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An act to amend Section 1005.5 of, to add Section 1012 to, and to add and repeal Article 6 (commencing with Section 1125) of Chapter 5 of Part 1 of Division 1 of, the Public Utilities Code, relating to gas pipelines, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 47, as introduced, Diaz. Public utilities: facilities: gas and electricity.

(1) Existing law requires the Public Utilities Commission in issuing a certificate of public convenience and necessity authorizing the new construction of any addition to or extension of an electric or a gas corporation plant estimated to cost over \$50,000,000, to specify in the certificate the maximum reasonable cost of the construction project, taking specified matters into consideration. Existing law provides that after the certificate has been issued, the corporation may apply to the commission for an increase in the maximum cost specified in the certificate.

This bill would instead require the commission to specify the maximum reasonable cost when the estimated cost is over \$100,000,000.

The bill would provide that the application from an increase may occur before, during, or after construction.

(2) Existing law requires the commission to consider whether or not the actual costs of construction are within the maximum cost specified by the commission, in any of its decisions establishing rates for an

electrical or gas corporation reflecting the reasonable and prudent costs of the new construction of any addition to or extension of the corporation's plant when the commission has found and determined that the addition or extension is used and useful.

This bill would delete the requirement that the commission consider whether or not the actual costs of construction are within the maximum cost specified by the commission in any of the described decisions.

(3) Existing law requires an electrical or gas corporation to submit an application to the Public Utilities Commission for a certificate of public convenience and necessity before construction of new facilities.

This bill would require the commission to make the determinations for a certificate of public convenience and necessity within a specified time period.

(4) Existing law requires the State Energy Resources and Conservation Commission to establish a process for the expedited review of applications to construct and operate powerplants and thermal powerplants and related facilities.

This bill would, until January 1, 2005, require the Public Utilities Commission to establish a similar process for the expedited review of and decision on a gas pipeline construction or expansion project, which would require the commission to establish a process to issue its final certification for any gas pipeline within 12 months after the filing of the application for a certificate of public convenience and necessity that, on the basis of an initial review, shows that the project will not cause a significant adverse effect on the environment and will comply with all applicable standards, ordinances, or laws. The bill would require that, for an application that the commission accepts under the expedited review process prescribed by the bill, all local, regional, and state agencies that would have had jurisdiction over the proposed gas pipeline, but for the exclusive jurisdiction of the commission, provide their final comments, determinations, or opinions to the commission within 100 days after the filing date of the application. By establishing new duties on local governments with respect to the provision of information to the commission necessary for the review of gas pipelines, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1005.5 of the Public Utilities Code is  
2 amended to read:

3 1005.5. (a) Whenever the commission issues to an electrical  
4 or gas corporation a certificate authorizing the new construction  
5 of any addition to or extension of the corporation’s plant estimated  
6 to cost greater than ~~fifty one hundred~~ million dollars  
7 ~~(\$50,000,000) (\$100,000,000)~~, the commission shall specify in  
8 the certificate a maximum cost determined to be reasonable and  
9 prudent for the facility. The commission shall determine the  
10 maximum cost using an estimate of the anticipated construction  
11 cost, taking into consideration the design of the project, the  
12 expected duration of construction, an estimate of the effects of  
13 economic inflation, and any known engineering difficulties  
14 associated with the project.

15 (b) After the certificate has been issued, *and before, during, or*  
16 *after construction*, the corporation may apply to the commission  
17 for an increase in the maximum cost specified in the certificate.  
18 The commission may authorize an increase in the specified  
19 maximum cost if it finds and determines that the cost has in fact  
20 increased and that the present or future public convenience and  
21 necessity require construction of the project at the increased cost;  
22 otherwise, it shall deny the ~~application~~ *requested increase*.

23 (c) After construction has commenced, the corporation may  
24 apply to the commission for authorization to discontinue  
25 construction and recover those costs ~~which~~ *that* were reasonably  
26 and prudently incurred. After a showing to the satisfaction of the  
27 commission that the present or future public convenience and  
28 necessity no longer require the completion of construction of the  
29 project, the commission may authorize discontinuance of  
30 construction and the recovery of those construction costs ~~which~~  
31 *that* were reasonable and prudent.



1 ~~(d) In any decision establishing rates for an electrical or gas~~  
2 ~~corporation reflecting the reasonable and prudent costs of the new~~  
3 ~~construction of any addition to or extension of the corporation's~~  
4 ~~plant, when the commission has found and determined that the~~  
5 ~~addition or extension is used and useful, the commission shall~~  
6 ~~consider whether or not the actual costs of construction are within~~  
7 ~~the maximum cost specified by the commission.~~

8 SEC. 2. Section 1012 is added to the Public Utilities Code, to  
9 read:

10 1012. Within 12 months of the date that a complete  
11 application for a certificate relating to natural gas pursuant to this  
12 article is filed with the commission, or after the commission  
13 receives notice of the completion of all other permitting  
14 requirements for the project, whichever occurs last, the  
15 commission shall make the determinations required by this article.  
16 If the commission fails to make the determinations within the later  
17 of these two time periods, then the project that is the subject of the  
18 application is exempt from the requirements of this article and  
19 Article 5 (commencing with Section 1091).

20 SEC. 3. Article 6 (commencing with Section 1125) is added  
21 to Chapter 5 of Part 1 of Division 1 of the Public Utilities Code,  
22 to read:

23  
24 Article 6. Expedited Review for Gas Pipelines

25  
26 1125. For purposes of this article, a "gas pipeline" means the  
27 construction or expansion of a pipeline to transport natural gas.

28 1126. This article is only applicable to a gas corporation that,  
29 pursuant to Section 1001 submits an application to construct or  
30 expand a natural gas pipeline.

31 1127. (a) Notwithstanding any other provision of law, the  
32 commission shall establish a process to issue its final certification  
33 for any gas pipeline within 12 months after the filing of the  
34 application for certification that, on the basis of an initial review,  
35 shows that there is substantial evidence that the project will not  
36 cause a significant adverse impact on the environment and will  
37 comply with all applicable standards, ordinances, or laws. For  
38 purposes of this section, filing means the filing of an application  
39 for a certificate of public convenience and necessity to construct  
40 a gas pipeline as prescribed in this article.



1 (b) Applications for gas pipelines reviewed under the process  
2 specified in subdivision (a) shall satisfy the requirements of each  
3 local, state, and regional agency that would have jurisdiction over  
4 the proposed gas pipeline, but for the exclusive jurisdiction of the  
5 commission and the information required for permitting by each  
6 federal agency that has jurisdiction over the proposed gas pipeline.

7 (c) After acceptance of an application under this section, the  
8 commission shall not be required to issue a final decision on the  
9 application within 12 months if it determines there is substantial  
10 evidence in the record that the gas pipeline may result in a  
11 significant adverse impact on the environment or does not comply  
12 with an applicable standard, ordinance, or law.

13 (d) For an application that the commission accepts under this  
14 section, all local, regional, and state agencies that would have had  
15 jurisdiction over the proposed gas pipeline, but for the exclusive  
16 jurisdiction of the commission, shall provide their final comments,  
17 determinations, or opinions to the commission within 100 days  
18 after the filing of the application. The regional water quality  
19 control boards, as established pursuant to Chapter 4 (commencing  
20 with Section 13200) of Division 7 of the Water Code, shall retain  
21 jurisdiction over any applicable water quality standard that is  
22 incorporated into any final certification issued pursuant to this  
23 chapter.

24 (e) Gas pipelines that demonstrate superior environmental or  
25 efficiency performance shall receive priority in review.

26 (f) With respect to a gas pipeline reviewed under the process  
27 established by this article, it shall be shown that the applicant has  
28 a contract with a general contractor and has contracted for an  
29 adequate supply of skilled labor to construct, operate, and  
30 maintain the pipeline.

31 (g) With respect to a gas pipeline reviewed under the process  
32 established by this article, it shall be shown that the gas pipeline  
33 complies with all regulations adopted by the commission.

34 (h) To implement this section, the commission may adopt  
35 emergency regulations in accordance with Chapter 3.5  
36 (commencing with Section 11340) of Part 2 of Division 3 of Title  
37 2 of the Government Code. For purposes of that chapter, including,  
38 but not limited to, Section 11349.6 of the Government Code, the  
39 adoption of the regulations shall be considered by the Office of  
40 Administrative Law to be necessary for the immediate



1 preservation of the public peace, health, safety, and general  
2 welfare.

3 (i) This section does not apply to an application filed with the  
4 commission before the effective date of this section.

5 (j) This section shall remain in effect only until January 1,  
6 2005, and as of that date is repealed, unless a later enacted statute,  
7 that is enacted before January 1, 2005, deletes or extends that date.

8 1128. (a) The commission shall implement procedures,  
9 consistent with Division 13 (commencing with Section 21000) of  
10 the Public Resources Code and with the federal Clean Air Act (42  
11 U.S.C.A. Sec. 7401 et seq.), for an expedited decision on a gas  
12 pipeline that can be put into service within one year from the  
13 effective date of this article, including a procedure for considering  
14 amendments to a pending application.

15 (b) The procedure shall include all of the following:

16 (1) A requirement that, within 15 days of receiving the  
17 application or amendment to a pending application, the  
18 commission shall determine whether the application is complete.

19 (2) A requirement that, within 25 days of determining that an  
20 application is complete, the commission shall determine whether  
21 the application qualifies for an expedited decision pursuant to this  
22 section. If an application qualifies for an expedited decision  
23 pursuant to this section, the commission shall provide written  
24 notice for the applicant, at the earliest possible date after receipt  
25 of the application.

26 (c) The commission shall issue its final decision on an  
27 application, including an amendment to a pending application,  
28 within four months from the date on which it deems the application  
29 or amendment complete, or at any later time mutually agreed upon  
30 by the commission and the applicant, provided that the gas pipeline  
31 remains likely to be in service before or during 2002.

32 (d) The commission shall issue a decision granting a permit to  
33 an applicant for a gas pipeline pursuant to this section if the  
34 commission finds all of the following:

35 (1) The gas pipeline is not a major stationary source or a  
36 modification to a major stationary source, as defined by the federal  
37 Clean Air Act, and will be equipped with best available control  
38 technology, in consultation with the appropriate air pollution  
39 control district or air quality management district and the State Air  
40 Resources Board.



1 (2) The gas pipeline will not have a significant adverse effect  
2 on the environment as a result of construction or operation.

3 (3) With respect to a project for a gas pipeline reviewed under  
4 the process established by this section, the applicant has a contract  
5 with a general contractor and has contracted for an adequate  
6 supply of skilled labor to construct, operate, and maintain the gas  
7 pipeline.

8 (e) In order to qualify for the procedure established by this  
9 section, an application or an amendment to a pending application  
10 shall be completed by \_\_\_\_\_, and include a description of the  
11 proposed conditions of certification that will do all of the  
12 following:

13 (1) Assure that the gas pipeline will not have a significant  
14 adverse effect on the environment as a result of construction or  
15 operation.

16 (2) Assure protection of public health and safety.

17 (3) Result in compliance with all applicable federal, state, and  
18 local laws, ordinances, and standards.

19 (4) A reasonable demonstration that the thermal powerplant  
20 and related facilities, if licensed on the expedited schedule  
21 provided by this section, will be in service before \_\_\_\_\_.

22 (5) Nothing in this section affects the ability of an applicant that  
23 receives approval for a gas pipeline as an amendment to a pending  
24 application to proceed with the original application for a gas  
25 pipeline.

26 (f) This section shall remain in effect only until January 1,  
27 2004, and as of that date is repealed, unless a later enacted statute,  
28 that is enacted before January 1, 2004, deletes or extends that date.

29 1129. This article shall remain in effect only until January 1,  
30 2005, and as of that date is repealed, unless a later enacted statute,  
31 that is enacted before January 1, 2005, deletes or extends that date.

32 SEC. 4. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 a local agency or school district has the authority to levy service  
35 charges, fees, or assessments sufficient to pay for the program or  
36 level of service mandated by this act, within the meaning of  
37 Section 17556 of the Government Code.

38 SEC. 5. This act is an urgency statute necessary for the  
39 immediate preservation of the public peace, health, or safety



- 1 within the meaning of Article IV of the Constitution and shall go
- 2 into immediate effect. The facts constituting the necessity are:
- 3 In order to prevent shortages of natural gas, it is necessary for
- 4 this act to take effect immediately.

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