

AMENDED IN ASSEMBLY MAY 27, 1999

AMENDED IN ASSEMBLY APRIL 26, 1999

AMENDED IN ASSEMBLY APRIL 14, 1999

AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1002

Introduced by Assembly Member Wright

February 25, 1999

An act to add Article 10 (commencing with Section 890) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1002, as amended, R. Wright. Natural gas: consumption surcharge.

(1) The Public Utilities Act and other existing law requires electrical and gas corporations to create certain public purpose programs, including assistance to low-income customers and low-income weatherization. The act authorizes the Public Utilities Commission to allow the inclusion of expenses for research and development in rates to be charged by, among other utilities, gas corporations.

This bill, except as specified, would require the commission to ~~impose~~ *establish* a surcharge on all natural gas consumed in this state to fund ~~those public purpose~~ *certain low-income*

assistance programs; *and* cost-effective energy efficiency and conservation activities, ~~and public interest research and development~~, as prescribed. The bill would require a ~~gas~~ *public utility gas corporation*, as described, to collect the surcharge from natural gas consumers, as specified. The money from the surcharge would be deposited in the Gas Consumption Surcharge Fund, which fund the bill would create, for continuous appropriation to specified entities, as prescribed. This bill would require the commission to ~~repeal~~ *modify* a specified existing tariff adopted by the commission and ~~replace it with a tariff~~ based on a prescribed calculation. The bill would ~~require that new tariff to apply until the commission determines that workable competition exists, at which point the bill would~~ require the commission, *if it makes a specified determination*, to allow a ~~public utility~~ gas corporation, ~~as defined~~, to provide service at competitive market-based rates. ~~The bill would provide an unspecified definition of workable competition.~~ Because a violation of the act is a crime, this bill would impose a state-mandated local program by creating a new crime. The bill would make legislative findings and declarations, *and statements of legislative intent*, relating to the surcharge and the tariff.

(2) 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.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. (a) The Legislature finds and declares
2 that statutes and regulations have imposed programs and
3 fees, such as energy efficiency, ~~public interest research~~
4 ~~and development~~, low-income assistance, and
5 weatherization programs, upon regulated gas utilities
6 that have public policy goals not directly related to the
7 provision of gas service. The costs borne by gas utilities to

1 provide these programs have historically been recovered
2 through gas rates established by the Public Utilities
3 Commission.

4 (b) The Legislature also finds and declares that, due to
5 changes in state and federal regulations, the monopolies
6 for the provisions of gas service in California that
7 effectively permitted the commission to allocate the cost
8 of these public policy programs to all gas users are being
9 replaced with competitive markets. Gas customers may
10 continue to take advantage of the deregulation of the gas
11 industries by obtaining service from nonregulated gas
12 providers who are not required to provide these
13 programs. Thus, these customers do not pay the costs of
14 public policy programs.

15 (c) It is the intent of the Legislature to continue public
16 policy programs in an equitable manner that will ensure
17 that all gas consumers will provide a fair share of adequate
18 funding for these programs without increasing the
19 current funding levels for these programs.

20 SEC. 2. Article 10 (commencing with Section 890) is
21 added to Chapter 4 of Part 1 of Division 1 of the Public
22 Utilities Code, to read:

23
24 Article 10. Natural Gas Surcharge
25

26 890. (a) No later than January 1, 2000, the
27 commission shall ~~impose~~ *establish* a surcharge, as
28 provided in this article, on all natural gas consumed in this
29 state to fund low-income assistance programs required by
30 Sections 739.1, 739.2, and 2790; ~~and cost-effective energy~~
31 ~~efficiency and conservation activities, and public interest~~
32 ~~research and development authorized by Section 740 that~~
33 ~~is not adequately provided by the competitive and~~
34 ~~regulated markets.~~ Upon implementation of this article,
35 funding for those programs shall be removed from the
36 rates of gas utilities.

37 (b) Except as specified in Section 898, a ~~gas utility~~
38 *public utility gas corporation*, as defined in *subdivision*
39 *(b)* of Section 891, shall collect the surcharge imposed
40 pursuant to subdivision (a) from any person consuming

1 natural gas in this state who receives gas service from the
2 ~~gas utility~~ *public utility gas corporation*.

3 (c) Except as specified in Section 898, all persons
4 consuming natural gas in this state that has been
5 transported by ~~a gas utility~~ *an interstate pipeline, as*
6 *defined in subdivision (c) of Section 891*, shall be liable for
7 the surcharge imposed pursuant to subdivision (a).

8 (d) The commission shall annually determine the
9 amount of money required for the following year to
10 administer this chapter and fund the natural gas related
11 programs described in subdivision (a) for the service
12 territory of each public utility gas corporation.

13 (e) The commission shall annually establish a
14 surcharge rate for each class of customer for the service
15 territory of each public utility gas corporation. A
16 customer of an interstate gas pipeline, as defined in
17 Section 891, shall pay the same surcharge rate as the
18 customer would pay if the customer received service
19 from the public utility gas corporation in whose service
20 territory the customer resides. The commission shall, ~~in~~
21 ~~determining~~ *determine the total volume of retail natural*
22 *gas transported within the service territory of a utility gas*
23 *provider, that is not subject to exemption pursuant to*
24 *Section 896*, for the purpose of establishing the surcharge
25 rate, ~~shall rely on information reported in the California~~
26 ~~Gas Report to determine the volumes of retail gas~~
27 ~~transported within the service territory of the public~~
28 ~~utility gas corporation.~~ The commission shall allocate the
29 surcharge for gas used by ~~noncore~~ *all* customers,
30 including those customers who were not subject to the
31 surcharge prior to January 1, 2000, ~~on an equal cent per~~
32 ~~therm basis~~ *based on a formula allocating all costs*
33 *associated with funding the public purpose programs by*
34 *core and noncore customer classes using the cost*
35 *allocation principles and the program budget in place on*
36 *December 31, 1998 on an equal cent per therm basis. The*
37 *rates for core customers shall not be affected by the*
38 *inclusion of those noncore customers who were not*
39 *required to fund the programs described in subdivision*
40 *(a) prior to January 1, 2000. The rates for core customers*

1 shall not be affected by the inclusion of those noncore
2 customers who were not required to fund the programs
3 described in subdivision (a) prior to January 1, 2000.

4 (f) The commission shall notify the State Board of
5 Equalization of the surcharge rate for each class of
6 customer served by an interstate pipeline in the service
7 territory of a public utility gas corporation.

8 (g) The State Board of Equalization shall notify each
9 *person who consumes natural gas delivered by an*
10 interstate pipeline of the surcharge rate for each class of
11 customer within the service territory of a public utility
12 gas corporation.

13 (h) The surcharge imposed pursuant to subdivision
14 (a) shall be in addition to any other charges for natural
15 gas sold or transported for consumption in this state. ~~The~~
16 *Effective on July 1, 2000, the* surcharge imposed pursuant
17 to this article shall be identified as a separate line item ~~on~~
18 ~~all gas bills received by each class of customer.~~ *the bill of*
19 *a customer of a public utility gas corporation.*

20 (i) Notwithstanding subdivision (a), public utility gas
21 corporations shall continue to collect in rates those costs
22 of programs associated with Sections 739.1, 739.2, and 2790
23 that are uncollected prior to the operative date of this
24 article.

25 891. (a) “Gas utility” means any public utility gas
26 corporation or interstate pipeline as defined in this
27 section.

28 (b) “Public utility gas corporation” means a public
29 utility gas corporation as defined in Section 216.

30 (c) “Interstate pipeline” means any entity that owns
31 or operates a natural gas pipeline delivering natural gas
32 to consumers in the state and is subject to rate regulation
33 by the Federal Energy Regulatory Commission.

34 (d) Each gas utility shall notify the State Board of
35 Equalization of its status under this section. *Each person*
36 *who consumes natural gas delivered by an interstate*
37 *pipeline shall annually register with the State Board of*
38 *Equalization.* The State Board of Equalization may
39 require any documentation that it determines to be
40 necessary to implement this article.

1 892. The revenue from the surcharge imposed
2 pursuant to this article and collected by ~~gas utilities a~~
3 *public utility gas corporation* shall be paid to the State
4 Board of Equalization in the form of remittances. *Persons*
5 *consuming natural gas delivered by an interstate pipeline*
6 *shall pay the surcharge to the State Board of Equalization*
7 *in the form of remittances.* The board shall transmit the
8 payments to the Treasurer who shall deposit the
9 payments in the Gas Consumption Surcharge Fund,
10 which is hereby created in the State Treasury.

11 893. The State Board of Equalization shall administer
12 the surcharge imposed pursuant to this article in
13 accordance with the Fee Collection Procedures Law
14 (Part 30 (commencing with Section 55001) of Division 2
15 of the Revenue and Taxation Code.

16 894. The State Board of Equalization may collect any
17 unpaid surcharge imposed pursuant to this article.

18 895. Notwithstanding Section 13340 of the
19 Government Code, funds in the Gas Consumption
20 Surcharge Fund are continuously appropriated, without
21 regard to fiscal years, as follows:

22 (a) To the commission or an entity designated by the
23 commission to fund programs pursuant to Sections 739.1,
24 739.2, and 2790.

25 ~~(b) To the California Board for Energy Efficiency, or~~
26 ~~an entity designated by the commission, to fund public~~
27 ~~interest research and development not adequately~~
28 ~~provided by the competitive and regulated markets.~~

29 ~~(c)~~

30 (b) To pay the commission for its costs in carrying out
31 its duties and responsibilities under this article.

32 ~~(d)~~

33 (c) To pay the State Board of Equalization for its costs
34 in administering this article.

35 896. "Consumption" means the use or employment of
36 natural gas. Consumption does not include the use or
37 employment of natural gas to generate power for sale, the
38 sale or purchase of natural gas for resale to end users, the
39 sale or use of gas for enhanced oil recovery, or natural gas

1 utilized in cogeneration technology projects to produce
2 electricity.

3 897. Nothing in this article impairs the rights and
4 obligations of parties to contracts approved by the
5 commission, as the rights and obligations were
6 interpreted as of January 1, 1998.

7 898. Notwithstanding Section 890, a municipality,
8 district, or public agency that provides *home*
9 *weatherization services, rate assistance for low-income*
10 *customers, or* programs similar to those described in
11 subdivision (a) of Section 890, ~~including home~~
12 ~~weatherization services or rate assistance for low-income~~
13 ~~customers~~ shall not be required to collect a surcharge
14 pursuant to this article from customers within its service
15 territory. A municipality, district, or public agency shall
16 be required to collect a surcharge pursuant to this article
17 from customers served by the municipality, district, or
18 public agency outside of its service territory unless the
19 commission determines that the entity offers those
20 customers services similar to those offered by gas utilities
21 as described in subdivision (a) of Section 890.

22 899. Sections 890 and 892 do not apply to any gas
23 customer of a municipality, district, or public agency
24 exempted by Section 896 from collecting a surcharge.

25 900. The commission shall ~~create~~ *establish* an advisory
26 board to make recommendations regarding the most
27 efficient and cost-effective way to provide programs
28 pursuant to Sections 739.1, 739.2, and 2790 in a consistent
29 manner statewide by utility provider service territory.
30 The advisory board shall be comprised of representatives
31 from utility gas providers, nonutility gas providers, the
32 Office of Ratepayer Advocates, the Energy Division
33 within the commission, consumer groups,
34 community-based organizations providing programs,
35 and other interested parties. On or before July 1, 2000, the
36 advisory group shall prepare and submit to the
37 commission a report. The commission may accept, reject,
38 or modify the recommendations. On or before July 1,
39 2001, the commission shall implement efficient and
40 cost-effective programs pursuant to Sections 739.1, 739.2,

1 and 2790. The commission may conduct compliance
2 audits to ensure compliance with any commission order
3 or resolution relating to the implementation of programs
4 pursuant to Sections 739.1, 739.2, and 2790, and may
5 conduct financial audits.

6 901. (a) The Legislature finds and declares all of the
7 following:

8 (a) The Federal Energy Regulatory Commission
9 certifies the construction of interstate natural gas
10 pipelines that provide an alternative for noncore natural
11 gas customers in this state.

12 (b) The introduction of federally regulated pipelines
13 for the transport of natural gas provides reasonable
14 alternatives for the transport of natural gas, and is an
15 indication that a competitive marketplace is emerging
16 for the transport of natural gas.

17 (c) It is the intent of the Legislature that, to eliminate
18 the uneconomic environment and establish a
19 competitive market, public utility gas corporations
20 should be allowed to provide service to customers who
21 bypass a utility system at competitive market-based rates.

22 902. (a) The commission shall ~~repeat~~ *modify* the
23 existing residual load service tariff adopted by the
24 commission, known as the RLS tariff, ~~and replace it with~~
25 ~~a tariff~~. *The modifications to the tariff shall be based on*
26 *the calculation described in subdivision (b) (c) and shall*
27 *apply to a customer who concurrently uses the public*
28 *utility gas corporation's intrastate pipeline system for*
29 *peaking service and also takes service from an interstate*
30 *pipeline not subject to the jurisdiction of the commission.*

31 (b) *For purposes of this section, the following*
32 *definitions apply:*

33 (1) *"Firm service for stated volumes" means service*
34 *that is designed for relatively constant but reduced usage*
35 *on the utility gas corporation's pipeline system. On any*
36 *day, the customer may schedule up to a stated maximum*
37 *daily quantity.*

38 (2) *"Contingency service" means service that applies*
39 *to unanticipated and unscheduled usage of the utility gas*
40 *corporation's pipeline, for example, due to unanticipated*

1 *short-term reductions in the capacity of the interstate*
2 *pipeline as a result, for example, of mechanical*
3 *breakdowns.*

4 (3) *“Peak period service” means service that applies*
5 *to anticipated and scheduled usage of the utility gas*
6 *corporation’s pipeline, for example, at times of scheduled*
7 *maintenance on the alternate pipeline or of anticipated*
8 *peaks in the partial requirements customer’s usage.*

9 (4) *“Peaking service” means intrastate transportation*
10 *for the services described in paragraphs (1), (2), and (3)*
11 *above, and shall be differentiated from customers taking*
12 *all their requirements from a gas corporation.*

13 (5) *“Concurrent” means taking service from a utility*
14 *gas corporation and an interstate pipeline not subject to*
15 *the jurisdiction of the commission at any time during the*
16 *most recent 12-month period, not necessarily limited to*
17 *overlapping scheduling of deliveries. This definition of*
18 *concurrent shall be used solely for the purpose of*
19 *determining which customer of a gas corporation is*
20 *served as a full requirements customer and which*
21 *customer is served under the peaking service.*

22 (c) *For all service volumes, the customer shall pay a*
23 *volumetric rate and a monthly demand charge.*

24 (1) *The monthly demand charge shall be billed only*
25 *during the months of use. The demand charge rate shall*
26 *be calculated using the customer, transmission,*
27 *distribution, and load balancing storage costs allocated to*
28 *the particular customer’s customer class, or sub-class, if*
29 *the class rates are segmented by size or pressure level in*
30 *noncore long run marginal cost rates. The demand*
31 *charge volume shall be based on the weighted average of*
32 *the following: (A) 50 percent on the greater of (i) the*
33 *customer’s peak day usage in that billing month, or (ii)*
34 *the customer’s maximum daily quantity, for customers*
35 *that contract for a maximum daily quantity; and (B) 50*
36 *percent on the customer’s usage on the utility gas*
37 *corporations most recent system peak day. This 50/50*
38 *allocation shall remain in place until the commission*
39 *reviews the appropriate allocation of these cost categories*

1 *between the customer's usage on the customer's peak day*
2 *on the gas corporation's system peak day.*

3 *(2) The volumetric charge shall be calculated as the*
4 *difference between the otherwise applicable tariffed*
5 *volumetric rate and the demand charge component*
6 *expressed on a volumetric basis. The volumetric charge*
7 *shall be collected on metered throughput to the gas*
8 *corporation's meter at the customer's facility.*

9 *(3) Peaking service usage up to the maximum daily*
10 *quantity shall be treated as firm noncore service. All*
11 *peaking service volumes in excess of the maximum daily*
12 *quantity shall be treated as interruptible service. Peaking*
13 *service shall be treated as any other comparable firm or*
14 *interruptible service by the gas corporation.*

15 *(d) It is not the intent of the Legislature, in enacting*
16 *this statute, for the shareholders of the gas corporation or*
17 *other customers to subsidize any investment needed to*
18 *upgrade the gas corporation's facilities to serve customers*
19 *taking peaking service.*

20 *(e) If a customer who is no longer taking service from*
21 *an interstate pipeline chooses to resume full service from*
22 *a utility gas corporations under the standard tariff rates,*
23 *the customer shall physically disconnect from the bypass*
24 *line.*

25 *(f) If the commission restructures the gas*
26 *corporation's rates to differentiate pricing between firm*
27 *and interruptible service, the commission is instructed to*
28 *also consider the proper pricing for different levels of*
29 *service for peaking service. Nothing in this bill is intended*
30 *to limit the commission's flexibility in restructuring*
31 *jurisdictional intrastate gas transportation, including the*
32 *unbundling of transportation service, pricing, or rate*
33 *design.*

34 *(g) The peaking service described above shall be*
35 *implementing on each gas corporation's system by June*
36 *1, 2000.*

37 *903. The Legislature finds and declares that recent*
38 *changes in the natural gas industry have provided natural*
39 *gas customers with the opportunity to take some or all of*
40 *their natural gas services from natural gas providers*

1 regulated by the Federal Energy Regulatory
2 Commission. At the same time, natural gas corporations
3 regulated by the commission continue to have an
4 obligation to serve customers who partially or fully bypass
5 their distribution system.

6 904. (a) It is the intent of the Legislature to authorize
7 gas corporations to fulfill their obligation to serve
8 customers who partially or fully bypass the gas
9 corporation's transmission and distribution system by
10 offering service at commission-authorized competitive
11 market-based rates, once the commission makes a finding
12 that there is a workably competitive market.

13 (b) The tariff described in Section 902 shall apply until
14 the commission determines that workable competition
15 exists. If the commission determines that workable
16 competition exists, the commission shall allow a public
17 utility gas corporation to provide service at competitive
18 market-based rates. The commission shall make its
19 determination by considering the full range of natural gas
20 transportation and energy source alternatives available to
21 the bypassing customer. Specifically, the consideration of
22 these alternatives may include, but is not limited to, all of
23 the following:

24 (1) Alternate natural gas pipeline transportation
25 systems, both interstate and local.

26 (2) The availability of a functioning secondary market
27 for transportation rights on the gas corporation's system.

28 (3) Alternate energy sources that act as viable
29 substitutes for the gas corporation's natural gas
30 transportation service.

31 (4) Whether the public utility gas corporation has a
32 significant market share based on its filing in which case
33 it shall do all of the following:

34 (A) Explain the basis for a market power assessment.

35 (B) Identify relevant markets in which it lacks
36 significant market power.

37 (C) Present other relevant market power measures.

38 (D) Discuss other factors that bear on the issue.

39 (c) Once such a determination has been made, the
40 commission shall authorize a gas corporation to offer to

1 provide natural gas service to customers who partially or
2 fully bypass the gas corporation's distribution system at
3 competitive market-based rates submitted to the
4 commission. The commission shall protect the
5 confidentiality of such terms and conditions as necessary
6 to preserve customers and competitive confidentiality
7 interests.

8 (d) Notwithstanding subdivision (c), the commission
9 shall not approve any rate application that relieves the
10 gas corporation of the obligation to serve wholesale
11 customers where the bypass gas supply is natural gas
12 produced and consumed within the service territory of
13 the wholesale customer.

14 ~~(b) For customers who bypass a utility system, the~~
15 ~~tariff rate shall include a monthly demand charge,~~
16 ~~applied during the month of utility system usage, using a~~
17 ~~calculation based 50 percent on the customer's monthly~~
18 ~~peak usage and 50 percent on the customer's usage on the~~
19 ~~public utility gas corporation's annual system peak day.~~

20 ~~(c) The tariff described in subdivision (a) shall apply~~
21 ~~until the commission determines that workable~~
22 ~~competition exists. If the commission determines that~~
23 ~~workable competition exists, the commission shall allow~~
24 ~~a public utility gas corporation to provide service at~~
25 ~~competitive market-based rates. As used in this section,~~
26 ~~"workable competition" means _____.~~

27 SEC. 3. No reimbursement is required by this act
28 pursuant to Section 6 of Article XIII B of the California
29 Constitution because the only costs that may be incurred
30 by a local agency or school district will be incurred
31 because this act creates a new crime or infraction,
32 eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section
34 17556 of the Government Code, or changes the definition
35 of a crime within the meaning of Section 6 of Article
36 XIII B of the California Constitution.