

AMENDED IN SENATE JULY 8, 1999  
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

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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 establish a surcharge on all natural gas consumed in this

state to fund 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 public utility gas corporation, as described, to collect the surcharge from natural gas consumers, as specified. *The bill would affect consumers of natural gas that has been transported by an alternate pipeline, as prescribed.* 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 modify a specified existing tariff adopted by the commission based on a prescribed calculation. The bill would require the commission, if it makes a specified determination, to allow a gas corporation to provide service at competitive market-based rates. 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: <sup>2</sup>/<sub>3</sub>. 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, low-income assistance,  
4 and weatherization programs, upon regulated gas  
5 utilities that have public policy goals not directly related  
6 to the provision of gas service. The costs borne by gas  
7 utilities to provide these programs have historically been  
8 recovered through gas rates established by the Public  
9 Utilities Commission.

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

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

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

Article 10. Natural Gas Surcharge

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

(b) Except as specified in Section 898, a public utility gas corporation, as defined in subdivision (b) of Section 891, shall collect the surcharge imposed pursuant to subdivision (a) from any person consuming natural gas in this state who receives gas service from the public utility gas corporation.

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

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

(e) The commission shall annually establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation. A customer of an interstate gas pipeline *or alternate pipeline*, as defined in Section 891, shall pay the same surcharge rate as the customer would pay if the customer received service from the public utility gas corporation in whose service territory the customer resides. The commission shall determine the total volume of retail natural gas transported within the service territory of a utility gas provider, that is not subject to exemption pursuant to Section 896, for the purpose of establishing the surcharge rate. ~~The commission shall allocate the surcharge for gas used by all customers, including those customers who were not subject to the surcharge prior to January 1, 2000, based on a formula allocating all costs associated with funding the public purpose programs by core and noncore customer classes using the cost allocation principles and the program budget in place on December 31, 1998 on an equal cent per therm basis. The rates for core customers shall not be affected by the inclusion of those noncore customers who were not required to fund the programs described in subdivision (a) prior to January 1, 2000. The rates for core customers shall not be affected by the inclusion of those noncore customers who were not required to fund the programs described in subdivision (a) prior to January 1, 2000.~~

(f) *The commission shall allocate the surcharge for gas used by all customers, including those customers who*

1 were not subject to the surcharge prior to January 1, 2000,  
2 based on the following formula:

3 (1) The commission shall allocate all costs associated  
4 with funding the public purpose programs by core and  
5 noncore customer classes using the cost allocation  
6 principles and the program budget in place December  
7 31, 1998. The rates for core customers shall not be affected  
8 by the inclusion of those noncore customers who were not  
9 required to fund the programs described in subdivision  
10 (a) prior to January 1, 2000.

11 (2) The commission shall allocate any increase in the  
12 cost to fund the California Alternative Rates for Energy  
13 (CARE) program, described in Section 739.1, above the  
14 December 31, 1998, level, by allocating 85 percent of the  
15 increase in program cost to the core customer class and  
16 15 percent of the increase in program cost to the noncore  
17 customer class.

18 (3) The commission shall allocate any reduction in the  
19 cost to fund the California Alternative Rates for Energy  
20 (CARE) program, described in Section 739.1, down to the  
21 December 31, 1998, program funding level by allocating  
22 85 percent of the reduction to the core customer class and  
23 15 percent of the reduction to the noncore customer class.  
24 Any reductions in the cost to fund the California  
25 Alternative Rates for Energy (CARE) program,  
26 described in Section 739.1, below the December 31, 1998,  
27 program funding level shall be allocated based on the cost  
28 allocation principles in place for each customer class on  
29 December 31, 1998.

30 ~~(f)~~—

31 (g) The commission shall notify the State Board of  
32 Equalization of the surcharge rate for each class of  
33 customer served by an interstate pipeline in the service  
34 territory of a public utility gas corporation.

35 ~~(g)~~—

36 (h) The State Board of Equalization shall notify each  
37 person who consumes natural gas delivered by an  
38 interstate or alternate pipeline of the surcharge rate for  
39 each class of customer within the service territory of a  
40 public utility gas corporation.

(h) The surcharge imposed pursuant to subdivision (a) shall be in addition to any other charges for natural gas sold or transported for consumption in this state. Effective on July 1, ~~2000~~ 2001, the surcharge imposed pursuant to this article shall be identified as a separate line item the bill of a customer of a public utility gas corporation.

(i) Notwithstanding subdivision (a), public utility gas corporations shall continue to collect in rates those costs of programs ~~associated with Sections 739.1, 739.2, and 2790 described in subdivision (a) of Section 890~~ that are uncollected prior to the operative date of this article.

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

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

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

(d) *For purposes of this article, “alternate pipeline” means any entity that owns or operates a natural gas pipeline delivering natural gas to consumers in the state and is not regulated by the Federal Energy Regulatory Commission or the commission.*

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

892. The revenue from the surcharge imposed pursuant to this article and collected by a public utility gas corporation *or alternate pipeline* shall be paid to the State Board of Equalization in the form of remittances. Persons consuming natural gas delivered by an interstate pipeline shall pay the surcharge to the State Board of Equalization in the form of remittances. The board shall transmit the

1 payments to the Treasurer who shall deposit the  
2 payments in the Gas Consumption Surcharge Fund,  
3 which is hereby created in the State Treasury.

4 893. The State Board of Equalization shall administer  
5 the surcharge imposed pursuant to this article in  
6 accordance with the Fee Collection Procedures Law  
7 (Part 30 (commencing with Section 55001) of Division 2  
8 of the Revenue and Taxation Code.

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

11 895. Notwithstanding Section 13340 of the  
12 Government Code, funds in the Gas Consumption  
13 Surcharge Fund are continuously appropriated, without  
14 regard to fiscal years, as follows:

15 (a) To the commission or an entity designated by the  
16 commission to fund programs pursuant to Sections 739.1,  
17 739.2, and 2790.

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

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

22 896. "Consumption" means the use or employment of  
23 natural gas. Consumption does not include the use or  
24 employment of natural gas to generate power for sale, the  
25 sale or purchase of natural gas for resale to end users, the  
26 sale or use of gas for enhanced oil recovery, or natural gas  
27 utilized in cogeneration technology projects to produce  
28 electricity.

29 897. Nothing in this article impairs the rights and  
30 obligations of parties to contracts approved by the  
31 commission, as the rights and obligations were  
32 interpreted as of January 1, 1998.

33 898. Notwithstanding Section 890, a municipality,  
34 district, or public agency that ~~provides~~ *offers in published*  
35 *tariffs* home weatherization services, rate assistance for  
36 low-income customers, or programs similar to those  
37 described in subdivision (a) of Section 890, shall not be  
38 required to collect a surcharge pursuant to this article  
39 from customers within its service territory. A  
40 municipality, district, or public agency shall be required



1 to collect a surcharge pursuant to this article from  
2 customers served by the municipality, district, or public  
3 agency outside of its service territory unless the  
4 commission determines that the entity offers those  
5 customers services similar to those offered by gas utilities  
6 as described in subdivision (a) of Section 890.

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

10 900. The commission shall ~~establish an advisory board~~  
11 ~~to make recommendations regarding the most efficient~~  
12 ~~and cost-effective way to provide programs pursuant to~~  
13 ~~Sections 739.1, 739.2, and 2790 in a consistent manner~~  
14 ~~statewide by utility provider service territory. The~~  
15 ~~advisory board shall be comprised of representatives~~  
16 ~~from utility gas providers, nonutility gas providers, the~~  
17 ~~Office of Ratepayer Advocates, the Energy Division~~  
18 ~~within the commission, consumer groups,~~  
19 ~~community-based organizations providing programs,~~  
20 ~~and other interested parties. On or before July 1, 2000, the~~  
21 ~~advisory group shall prepare and submit to the~~  
22 ~~commission a report. The commission may accept, reject,~~  
23 ~~or modify the recommendations. On or before July 1,~~  
24 ~~2001, the commission shall implement efficient and~~  
25 ~~cost-effective programs pursuant to Sections 739.1, 739.2,~~  
26 ~~and 2790 determine the most efficient and cost-effective~~  
27 ~~way to provide programs pursuant to Sections 739.1, 739.2,~~  
28 ~~and 2790 in a consistent manner statewide by utility~~  
29 ~~provider service territory. In determining the most~~  
30 ~~cost-effective way to provide service that benefits~~  
31 ~~persons eligible for low-income programs, the~~  
32 ~~commission shall consider factors, including, but not~~  
33 ~~limited to, outreach efforts to reach the targeted~~  
34 ~~population and the types of discounts and services that~~  
35 ~~should be provided by each utility. On or before July 1,~~  
36 ~~2001, the commission shall develop and implement~~  
37 ~~efficient and cost-effective programs pursuant to Sections~~  
38 ~~739.1, 739.2, and 2790. The commission may conduct~~  
39 ~~compliance audits to ensure compliance with any~~  
40 ~~commission order or resolution relating to the~~



1 implementation of programs pursuant to Sections 739.1,  
2 739.2, and 2790, and may conduct financial audits.

3 901. (a) The Legislature finds and declares all of the  
4 following:

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

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

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

20 902. (a) The commission shall modify the *rates*  
21 *specified in the* existing residual load service tariff  
22 adopted by the commission, ~~known as the RLS tariff in~~  
23 *Decisions Nos. 95-07-046 and 97-04-082.* The modifications  
24 to the tariff shall be based on the calculation described  
25 in subdivision (c) and shall apply to a customer who  
26 concurrently uses the public utility gas corporation's  
27 intrastate pipeline system for peaking service and also  
28 takes service from an interstate pipeline not subject to the  
29 jurisdiction of the commission.

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

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

37 (2) "Contingency service" means service that applies  
38 to unanticipated and unscheduled usage of the *public*  
39 utility gas corporation's pipeline, for example, due to  
40 unanticipated short-term reductions in the capacity of

1 the interstate pipeline as a result, for example, of  
2 mechanical breakdowns.

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

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

13 (5) “Concurrent” means taking service from a utility  
14 gas corporation and an interstate *or alternate* pipeline not  
15 subject to the jurisdiction of the commission at any time  
16 during the most recent 12-month period, not necessarily  
17 limited to overlapping scheduling of deliveries. This  
18 definition of concurrent shall be used solely for the  
19 purpose of determining which customer of a gas  
20 corporation is served as a full requirements customer and  
21 which 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 subclass, if the  
29 class rates are segmented by size or pressure level in  
30 noncore longrun marginal cost rates. The demand charge  
31 volume shall be based on the weighted average of the  
32 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~~  
40 ~~between the customer’s usage on the customer’s peak day~~

~~on the gas corporation's system peak day. The 50/50 allocation shall remain in place as long as the public utility gas corporations' commission approved rates are based on long-run marginal costs. If the commission adopts a costing methodology that is not based on long-run marginal costs, the commission shall establish a residual load service tariff that is consistent with the cost and rate design principles applied to full requirements customers. This tariff shall remain in existence until the commission determines that there is workable competition pursuant to a formal proceeding.~~

(2) The volumetric charge shall be calculated as the difference between the otherwise applicable tariffed volumetric rate and the demand charge component expressed on a volumetric basis *for class or subclass*. The volumetric charge shall be collected on metered throughput to the *public utility* gas corporation's meter at the customer's facility.

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

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

(e) If a customer who is no longer taking service from an interstate pipeline chooses to resume full service from a utility gas corporations under the standard tariff rates, ~~the customer shall physically disconnect from the bypass line.~~ *the customer cannot take gas from the bypass line. This customer can be prevented from taking gas by requiring the locking of the block valve in the fully closed position or the removal of the flange section at the point of connection with the bypass pipeline.*

(f) If the commission restructures the gas corporation's rates to differentiate pricing between firm

1 and interruptible service, the commission is instructed to  
2 also consider the proper pricing for different levels of  
3 service for peaking service. Nothing in this bill is intended  
4 to limit the commission's flexibility in restructuring  
5 jurisdictional intrastate gas transportation, including the  
6 unbundling of transportation service, pricing, or rate  
7 design.

8 ~~(g) The peaking service described above shall be~~  
9 ~~implementing on each gas corporation's system by June~~  
10 ~~1, 2000. This section shall be fully implemented by June~~  
11 ~~1, 2000.~~

12 903. The Legislature finds and declares that recent  
13 changes in the natural gas industry have provided natural  
14 gas customers with the opportunity to take some or all of  
15 their natural gas services from natural gas providers  
16 regulated by the Federal Energy Regulatory  
17 Commission. At the same time, natural gas corporations  
18 regulated by the commission continue to have an  
19 obligation to serve customers who partially or fully bypass  
20 their distribution system.

21 904. ~~(a) It is the intent of the Legislature to authorize~~  
22 ~~gas corporations to fulfill their obligation to serve~~  
23 ~~customers who partially or fully bypass the gas~~  
24 ~~corporation's transmission and distribution system by~~  
25 ~~offering service at commission-authorized competitive~~  
26 ~~market-based rates, once the commission makes a finding~~  
27 ~~that there is a workably competitive market.~~

28 ~~(b) The tariff described in Section 902 shall apply until~~  
29 ~~the commission determines that workable competition~~  
30 ~~exists. If the commission determines that workable~~  
31 ~~competition exists, the commission shall allow a public~~  
32 ~~utility gas corporation to provide service at competitive~~  
33 ~~market-based rates. The commission shall make its~~  
34 ~~determination by considering the full range of natural gas~~  
35 ~~transportation and energy source alternatives available to~~  
36 ~~the bypassing customer. Specifically, the consideration of~~  
37 ~~these alternatives may include, but is not limited to, all of~~  
38 ~~the following:~~

39 ~~(1) Alternate natural gas pipeline transportation~~  
40 ~~systems, both interstate and local.~~

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

3 ~~(3) Alternate energy sources that act as viable~~  
4 ~~substitutes for the gas corporation's natural gas~~  
5 ~~transportation service.~~

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

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

10 ~~(B) Identify relevant markets in which it lacks~~  
11 ~~significant market power.~~

12 ~~(C) Present other relevant market power measures.~~

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

14 ~~(e) Once such a determination has been made, the~~  
15 ~~commission shall authorize a gas corporation to offer to~~  
16 ~~provide natural gas service to customers who partially or~~  
17 ~~fully bypass the gas corporation's distribution system at~~  
18 ~~competitive market-based rates submitted to the~~  
19 ~~commission. The commission shall protect the~~  
20 ~~confidentiality of such terms and conditions as necessary~~  
21 ~~to preserve customers and competitive confidentiality~~  
22 ~~interests.~~

23 ~~(d) Notwithstanding subdivision (e), the~~ *The*  
24 ~~commission shall not approve any rate application that~~  
25 ~~relieves the gas corporation of the obligation to serve~~  
26 ~~wholesale customers where the bypass gas supply is~~  
27 ~~natural gas produced and consumed within the service~~  
28 ~~territory of the wholesale customer.~~

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