STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**08/15/11**	Bill No:	**Senate Bill 939**
Tax Program:	**Natural Gas Surcharge**	Author:	**Wright**
Sponsor:	**Author**	Code Sections:	**PUC 890, 892, 892.1, 892.2, 893 & 894**
Related Bills:	**SB 870 (Padilla and Steinberg)**	Effective Date:	**01/01/12**

BILL SUMMARY

Among other things, this bill would make the following changes to the Natural Gas Surcharge Law:

- Require the Public Utilities Commission (PUC) to establish rates that are sufficient to fund low-income assistance programs, cost-effective energy efficiency and conservation activities, and public interest research and development (public policy programs).
- No longer require a public utility gas corporation to collect and remit the natural gas surcharge to the State Board of Equalization (BOE), but instead collect amounts to fund public policy programs through PUC-established rates from any person consuming natural gas in this state from the public utility gas corporation.
- Make persons consuming natural gas in this state that has been transported by an interstate pipeline liable for a surcharge equal to the rate component established by the PUC to fund public policy programs, which would be paid to the BOE quarterly.

ANALYSIS

CURRENT LAW

Under existing law, Article 10 (commencing with Section 890) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code imposes a surcharge on all natural gas consumed in this state. A public utility gas corporation is required to collect the surcharge from any person consuming natural gas in this state who receives gas service from that corporation and remit the surcharge quarterly to the BOE. In addition, all persons consuming natural gas in this state that has been transported by an interstate pipeline must pay the surcharge directly to the BOE on a quarterly basis. The BOE transmits the payments to the Treasurer for deposit in the Gas Consumption Surcharge Fund, which is used to fund public policy programs.

The PUC is charged with annually establishing a surcharge rate for each class of customer (core customers and non-core customers) for the service territory of each public utility gas corporation. A customer of an interstate gas pipeline is required to pay the same surcharge rate as the customer would pay if the customer received service from the public utility gas provider in whose service territory the customer resides.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

PROPOSED LAW

In general, this bill would no longer require a public utility gas corporation to collect the natural gas surcharge from persons consuming natural gas in this state and remit those amounts quarterly to the BOE. Instead, a public utility corporation would be required to collect the costs of public policy programs through PUC-established natural gas rates, which would not be remitted to the BOE.

Specifically, this bill would amend Section 890 to delete the language imposing a surcharge on all natural gas in this state and instead require the PUC to establish rates that are sufficient to fund public policy programs to be collected by a public utility gas corporation from any person consuming natural gas in this state who receives gas service from the gas corporation. All persons consuming natural gas in this state that has been transported by an interstate pipeline would continue to be liable for the surcharge, which would be equal to the rate component established by the PUC to fund public policy programs. All revenue would continue to be used for the current public policy programs.

The surcharge paid by a customer of an interstate gas pipeline would be equal to the rate the customer would pay if the customer received service from the public utility gas corporation within that gas corporation's service territory; or, if the customer is not located within a gas corporation's service territory, the applicable surcharge would be equal to the rate of the public utility gas corporation nearest the customer.

This bill would also amend Sections 892, 892.2, 893, and 894 to no longer require a public utility corporation to remit to the BOE the surcharge collected and to delete related administrative provisions. Persons consuming natural gas delivered by an interstate pipeline would continue to file a return and pay the surcharge directly to the BOE.

This bill would become effective January 1, 2012.

BACKGROUND

SB 678 (Calderon, Chapter 285, Statutes of 1996) required the PUC to prepare a report recommending an approach to funding low-income public policy programs that did not create a competitive imbalance between regulated and unregulated natural gas providers. That report, reflected in Decision 97-06-108, recommended legislation to impose a nonbypassable gas surcharge, or, in plain English, require all current gas customers to continue to pay public policy charges even if they left the regulated utility system and purchased gas from a gas pipeline regulated by the Federal Energy Regulatory Commission (FERC).

In 1998, Assembly Bill 2112 (Wright) proposed to make the costs of natural gas public goods programs "nonbypassable." The purpose was to establish a nonbypassable public policy surcharge on current customers of PUC-regulated natural gas pipelines so that competition between PUC-regulated and FERC-regulated natural gas pipelines would be based upon service differences, rather than avoidance of the public policy surcharge. That bill, sponsored by Southern California Gas, would have required the PUC to administer the surcharge. However, AB 2112 did not receive the necessary votes for passage on the Senate Floor.

In 2000, AB 1002 (Wright, Chapter 932) added Article 10 (commencing with Section 890) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code to impose on and

after January 1, 2001, a surcharge on all natural gas consumed in this state to fund low-income assistance programs, cost-effective energy efficiency and conservation activities, and public interest research and development. That bill was sponsored by Sempra Energy and was intended to spread the cost of the public policy programs among all users of natural gas in California and thereby correct the disparity between intrastate and interstate natural gas pipeline deliveries.

IN GENERAL

Prior to AB 1002, various public policy programs were paid for through gas rates charged to customers of utilities regulated by the PUC. The four programs are:

- California Alternate Rates for Energy Program (CARE) that provides rate assistance to low-income gas customers.
- Low-Income Direct Assistance Program (DAP) to finance weatherization of low-income housing.
- Research, Demonstration and Development (RD&D) to support technology research that would reduce energy production and use costs.
- Energy Efficiency Program (DSM) to reduce energy demand through the promotion of cost-effective energy conservation and efficiency measures.

These program costs were spread among core customers (residential and commercial) and non-core customers (large commercial and industrial) who purchase their gas from PUC-regulated utilities. FERC-regulated gas pipeline users did not have these public policy program costs reflected in the gas prices they paid to their supplier.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author and intended to avoid an unnecessary step, whereby gas utility companies remit the surcharge money they collect to the BOE, which is then deposited into the Gas Consumption Surcharge Fund, which the gas utility companies draw upon to operate programs authorized by statute and approved by the PUC.

   Furthermore, during budget deliberations earlier this year, legislative budget committees transferred several million dollars of ratepayer funds in the Gas Consumption Surcharge Fund to support General Fund programs. Accordingly, this bill is also intended to protect these public purpose funds from being diverted to pay for support of the General Fund.

2. **Would the natural gas surcharge program be cost effective?** During fiscal year 2009-10, the BOE collected $532.3 million in Natural Gas Surcharges. Public utility gas corporations reported 99.84% ($531.5 million) of this $532.3 million in natural gas surcharges, with the remaining 0.16% ($830,000) being reported and paid to BOE by consumers that withdrew natural gas directly from an interstate pipeline.

   The BOE's actual expenses to administer the program for fiscal year 2009-10 was $598,000, which consisted of fixed technology costs of approximately $400,000 and two limited term positions of approximately $200,000. This bill would not affect the BOE's fixed costs, although a portion of these costs would shift to other funds due to the decrease in revenues as a result of this bill. And it would be necessary to maintain the two limited term positions to conduct audits of consumers that withdraw

natural gas directly from interstate pipelines and to continue efforts to identify unregistered consumers subject to the natural gas surcharges.

Accordingly, this measure would result in a significant decrease in the amount of surcharge revenues deposited into the Gas Consumption Surcharge Fund, while the BOE's administrative costs would remain relatively unchanged. Based on the actual revenue and expenditure figures for fiscal year 2009-10, this measure would result in revenues of $830,000, with costs of $598,000 for the BOE to effectively administer the natural gas surcharge program.

3. **What duties would be left for the BOE?** Currently, 10 public utility gas corporations and 5 consumers are registered with and remit the surcharge to the BOE. If this bill is successfully signed into law, the BOE would be administering the natural gas surcharge program with 5 surcharge-payers.

   The BOE acknowledges that, based upon a review of PUC records, there is potential under-reporting of the surcharge that is likely attributable to increases in the number of industrial consumers who are directly "tapping" into interstate natural gas transmission pipelines. However, the BOE had no resources to identify these unregistered consumers since the BOE's funding was allocated to cover the technology costs of the program with no positions established to perform the work in the program area. Accordingly, the BOE submitted a 2009-10 Budget Change Proposal requesting two limited term positions as part of a three-year pilot program to identify, register, audit, and verify payments of the natural gas surcharge, which was approved.

   During fiscal year 2009-10, the BOE staff used a variety of tools to identify leads to unregistered consumers of natural gas, including audits of several public utility gas corporations. These audits provide the BOE staff access to public utility gas corporation records and other source documents that help identify potential consumers of natural gas for registration with the BOE. Since this bill would no longer require public utility gas corporations to be registered with, or to file returns or remit payments to, the BOE, the BOE staff would no longer conduct public utility gas corporation audits. Without access to public utility gas corporation records, discovering unregistered interstate pipeline consumers would be even more difficult.

   Furthermore, would the two positions due to expire June 30, 2012, be authorized to continue? Since the amount of revenue would decrease significantly, it would be challenging to justify incurring costs for these positions. Without these positions, the BOE would not have the resources to identify unregistered consumers or to conduct audits, thereby making the natural gas program a voluntary program in which the BOE simply processes the surcharge amounts remitted.

   As such, would the BOE still be the appropriate agency to administer the natural gas surcharge program if this measure is successfully signed into law? With the small number of remaining surcharge-payers, perhaps it would make more sense for the program to be placed with the PUC, who has expertise in the subject matter and access to records and information that may be helpful to identify consumers. It may also be more cost-effective to combine the surcharge administrative workload with the PUC's existing natural gas regulatory responsibilities.

4. **Technical Amendments.** It is suggested that language be added to the bill that would provide the BOE with the necessary authority to continue to assess and collect natural gas surcharge amounts that become due prior to the repeal of the surcharges.

   894. (a) The State Board of Equalization may collect any unpaid surcharge imposed pursuant to this article that is to be remitted to it pursuant to Section 892.2.

   (b) The provisions of Sections 890, 892, 892.1, 892.2, 893, and 894, as they read as of December 31, 2011, shall remain in effect for: the collection of assessments, the liability for which accrued prior to January 1, 2012; the making of any refunds and the effecting of any credits; the disposition of money collected; and the commencement of any action or proceeding pursuant to this part.

   Furthermore, subdivisions (b) and (c) of Section 890 provide that a public utility gas corporation shall collect the rate adjustments "imposed pursuant to subdivision (a)." However, subdivision (a) no longer contains any imposition language. It appears that the bill instead intends for a public utility gas corporation to collect the rate adjustments that are established (not imposed) by the PUC. If this is the case, the author may wish to amend the bill to clarify that intent. The following language is suggested:

   890. (b) Except as specified in Section 898, a public utility gas corporation, as defined in subdivision (b) of Section 891, shall collect the rate adjustments established~~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, shall be liable for a surcharge equal to the rate adjustment established ~~imposed~~ pursuant to subdivision (a).

   And lastly, the obsolete language provided in Section 890(i) that allows public utility gas corporations to continue to collect in rates those costs of public policy programs that are uncollected prior to this bill's operative date should be deleted. Since public utility gas corporations currently do not collect the costs of public policy programs in their rates, this provision is no longer necessary and may cause confusion. This provision was added pursuant to AB 1002, which enacted the natural gas surcharge, in order to allow public utility gas corporations to carry on the collection of amounts assessed by those gas corporations.

   The BOE has provided the author's office the above draft amendments to address these concerns.

5. **Related bills.** This measure contains provisions related to the natural gas surcharge that are identical to SB 870 (Padilla and Steinberg). However, SB 870 would only become operative if Assembly Bill 724 (Bradford) is enacted on or before January 1, 2012. The Senate refused adoption of AB 724's urgency clause; therefore, that bill will not be enacted before January 1, 2012.

COST ESTIMATE

The BOE would incur some insignificant costs (less than $10,000) to notify public utility gas corporations, process final returns, correspond with utility companies and their customers, and process refund claims and billings for past periods. These costs would be absorbable.

The BOE would not realize savings as a result of this measure since the BOE would still incur costs related to the two limited term positions in order to continue the new and ongoing workloads related to consumers of natural gas that are currently registered or may not be registered with the BOE, including, but not limited to, identifying and registering surcharge-payers, auditing surcharge program registrants, maintaining current registration information, tax return review and processing to detect errors, initiating refunds, adjusting incorrect payments, clearing delinquencies, issuing billings, working on accounts receivable collection cases, providing program information to registrants and interested parties, and supplying program specific statistical data, as required. This program picks up technology costs for BOE that would not be eliminated with the proposed change to this program. Passage of this bill would result in these costs shifting to other funds, including the General Fund, due to the reduction in revenue generated from the program.

REVENUE ESTIMATE

As stated earlier, under this bill, public utility gas corporations would no longer be required to collect the surcharge and remit it to the BOE. Users consuming natural gas that has been transported by an interstate pipeline would continue to be liable for the surcharge. During fiscal year 2009-10, the BOE collected $532.3 million in natural gas surcharges. Public utility gas corporations reported an estimated 99.84% ($531.45 million) of this $532.3 million in natural gas surcharges, with the remaining 0.16% ($850,000) being reported and paid to the BOE by consumers that withdrew natural gas directly from an interstate pipeline.

Assuming a 1% growth in relation to natural gas consumption in the state, it is estimated that, under existing law, the BOE would collect an estimated $870,000 in FY 2011-12 and $880,000 in FY 2012-13 from interstate pipeline consumers, and $542 million in FY 2011-12 and $548 million in FY 2012-13 from public utility gas corporations.

Accordingly, this bill would decrease the amount of revenue deposited into the Gas Consumption Surcharge Fund by an estimated $542 million in 2011-12, and $548 million in 2012-13.

Analysis prepared by:	Cindy Wilson	916-445-6036	10/05/11
Revenue estimate by:	Ronil Dwarka	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	

ls 0939sb081511cw.doc

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.