

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

Memorandum

Date: May 8, 2012

To: The Commission
(Meeting of May 10, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2564 (Ma) – Environmental quality: pipelines: project applicants.**
As amended: April 25, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL

The California Environmental Quality Act (CEQA) may require an environmental impact report (EIR) for certain pipeline repair and maintenance projects. However, projects in a public right of way and less than one mile in length do not require review under CEQA because of a statutory exemption. AB 2564 seeks to increase the exemption for projects up to 8-miles in length as long as only one-mile of that project is worked on at one time. The bill also seeks to allow any natural gas pipeline utility to voluntarily pay additional fees to permitting agencies in order to allow those agencies to complete reviews of the utility's permit requests in an accelerated manner.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

The proposed legislation may streamline the current permitting process for some projects by increasing the statutory CEQA exemption for pipeline projects from the current one mile to 8 miles. To the extent that planned pipeline repair and maintenance projects would fall under this expanded exemption, this would enable transmission pipeline operators to better plan for, schedule, and execute projects related to examination, pressure testing and/or replacement of pipeline segments identified for corrective actions per CPUC directives and requirements. In turn, better planning and execution of projects should allow operators to increase overall project efficiencies, decrease the likelihood of cascading project delays, lower overall costs to ratepayers, and decrease the likelihood of service disruptions.

SUMMARY OF SUGGESTED AMENDMENTS

None.

DIVISION ANALYSIS (Consumer Protection and Safety Division)

- The proposed legislation does not appear to significantly impact any current Commission programs or entail the need for the Commission to increase staffing, or allocate other resources toward the implementation of the bill's provisions.
- CPSD is aware that permitting issues have caused delays in excavations and other pipeline assessment activities pipeline operators are required to conduct as part of their integrity management programs. Such delays can impact the safety of the public if they prevent the operator from inspecting or testing its pipelines in a timely manner. It is not clear, however, if this bill will significantly avoid such delays in the future.
- The bill may assist pipeline operators in some circumstances in meeting Commission objectives to properly and in a timely manner test or replace transmission pipelines that are currently operating at maximum allowable operating pressures established through grandfathering provisions, or insufficiently performed or documented pressure tests.
- The proposed legislation may assist in avoiding certain permitting delays to the extent those delays are related to current CEQA requirements.

PROGRAM BACKGROUND

- Pub Resources Code section 20180.21 currently provides a statutory exemption from CEQA for certain utility infrastructure projects.
- The proposed legislation would revise section 20180.21 and replace the current one-mile limit with an eight-mile limit, and add a provision that states that work may not proceed on more than one mile of the eight-mile project at any given time.
- The CEQA Guidelines¹, sections 15301 and 15302 further provide certain categorical exemptions for utility infrastructure projects, depending on the nature of the project. Under sections 15301 and 15302, certain utility infrastructure projects are exempt regardless of the length of the project, as long as the project does not increase the capacity of the line (unless certain other conditions exist that make a significant environmental impact more likely).
- In Decision 11-06-017, the Commission required gas transmission pipeline operators (Operators) Pacific Gas & Electric Company (PG&E), Southern California Gas

¹ Title 14 California Code of Regulations Chapter 3 (the CEQA Guidelines), Article 19, sets forth certain categorical exemptions from the CEQA requirements.

Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), and Southwest Gas Corporation to file Implementation Plans by August 26, 2011.

- The Implementation Plans filed by operators identify the facilities, and prioritize phases, for testing or replacing California's transmission pipeline facilities lacking complete, accurate, and verifiable documentation related to their established operating pressures. In light of the 2010 incident in San Bruno, and the lessons learned related to untested or improperly tested transmission pipelines, it is essential that the activities addressed by D.11-06-017 be completed as soon as possible.
- The Implementation Plans filed by operators also define processes, and in some cases identify potential locations, for the installation of automated valves and telemetry equipment that may help operators to better detect, identify, and provide a timely response and reduce the consequences, in a densely populated area, of any significant breach to the integrity of a transmission pipeline.
- The Implementation Plans filed by PG&E, and jointly by SDG&E and SoCalGas, identify permitting related issues as serious hurdles that have the potential to cause significant delays in the projects included in their implementation plans.
- The overall projects that PG&E, SoCalGas, and SDG&E are proposing, to test pipelines currently operating and serving customers, and the amount of replacement of large diameter pipe in established, populated, areas being contemplated, represent efforts of a magnitude that no operator in the nation has completed in the past. These efforts will require significant planning, scheduling, and coordinating in order to safely carry-out the overall program, contain costs, and avoid service disruptions.
- Permitting requirements that create onerous conditions for compliance, or otherwise delay an individual project included in the operator's Implementation Plans, have the potential to delay not only that individual project, but other projects that may be relying on completion of that project before proceeding. Coordination issues, especially with large volume customers who are completely dependent on a given pipeline for their source of gas (i.e., power plants) could further delay other projects. The net effect of these cascading delays has serious potential to prevent testing or replacement from being completed in a timely manner, increasing overall program costs, and customers experiencing service disruptions.

LEGISLATIVE HISTORY

In the 1995/96 legislative session, Assembly Bill 1487 (Pringle) added Section 21080.23 to the Public Resources Code. This provision provided an exemption from CEQA for projects related to hazardous liquids pipelines less than 8 miles in length. The exemption provided by Section 21080.23 allowed ARCO Pipeline Company to perform extensive pipeline work involving the removal of all acetylene welded pipeline.

FISCAL IMPACT

None.

STATUS:

AB 2564 is pending consideration in the Assembly Natural Resources Committee.

SUPPORT/OPPOSITION

Support

None on file.

Opposition

None on file.

STAFF CONTACTS

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BILL LANGUAGE

BILL NUMBER: AB 2564 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 25, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012

INTRODUCED BY Assembly Member Ma

FEBRUARY 24, 2012

An act to amend Sections 21080.21, 21100.2, and 21168.6 of, and to add Section 21063.5 to, the Public Resources Code, relating to environmental quality , *and declaring the urgency thereof, to take effect immediately* .

LEGISLATIVE COUNSEL'S DIGEST

AB 2564, as amended, Ma. Environmental quality: pipelines: project applicants.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA exempts a project of less than one mile in length within a public street or highway or any other public right-of-way for the installation of a new pipeline, as defined, or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline.

This bill would revise that exemption for pipeline projects to instead exempt a project of less than 8 miles in length, but would restrict the exemption to activities that do not take place along more than one mile at any one time. The bill would also revise the definition of the term pipeline for purposes of this exemption to delete the exclusion for surface facilities related to the operation of the underground facility.

The bill would also require a public agency to establish a process that would allow an applicant for a natural gas pipeline safety enhancement project, as defined, to elect to pay additional fees to be used by the public agency in determining whether to approve that project by entering into a contract with one or more 3rd parties to assist the public agency to perform the analysis. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) CEQA requires, for purposes of actions against the Public Utilities Commission, the writ of mandate to lie only from the Supreme Court to the commission.

This bill would require, in an action or proceeding against a public agency involving a natural gas pipeline safety enhancement project, the writ of mandate to lie only from the Supreme Court to

the public agency.

(3) 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.

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

Vote: ~~majority~~ 2/3 . Appropriation:
no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is a matter of statewide concern to achieve the timely completion of natural gas pipeline safety enhancements, including programs for maintenance and operation enhancements, and to contribute to the public's confidence in the safety of natural gas pipelines and their ongoing maintenance and operation.

(b) It is in the public interest to accelerate the permitting process for natural gas pipeline safety enhancements, including programs for maintenance and operation enhancements, and for permitting agencies to give these projects priority in processing permits.

(c) It is in the public interest to enable state agencies to better carry out their permitting responsibilities by providing applicants an option for enhancing available resources for permit processing.

SEC. 2. Section 21063.5 is added to the Public Resources Code, to read:

21063.5. "Natural gas pipeline safety enhancement project" means an activity undertaken by a public utility as part of a program to enhance the safety of intrastate natural gas pipelines in accordance with a decision, rule, or regulation adopted by the Public Utilities Commission.

SEC. 3. Section 21080.21 of the Public Resources Code is amended to read:

21080.21. (a) This division does not apply to any project of less than eight miles in length within a public street or highway or any other public right-of-way for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline, if the activity does not take place along more than one mile at any one time.

(b) For purposes of this section, "pipeline" includes any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

SEC. 4. Section 21100.2 of the Public Resources Code is amended to read:

21100.2. (a) (1) For projects described in subdivision (c) of Section 21065, each state agency shall establish, by resolution or order, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) shall apply only to those circumstances in which the state agency is the lead agency for a project. These resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency.

(3) No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed in state regulations.

(4) The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, or focused environmental impact report is prepared under a contract to a state agency, the contract shall be executed within 45 days from the date on which the state agency sends a notice of preparation pursuant to Section 21080.4. The state agency may take longer to execute the contract if the project applicant and the state agency mutually agree to an extension of the time limit provided by this subdivision.

(c) (1) A public agency shall establish a process that would allow a natural gas pipeline safety enhancement project applicant to elect to pay additional fees to be used by the public agency in determining whether to approve a natural gas pipeline safety enhancement project by entering into a contract with one or more third parties to assist the public agency to perform the analysis, consistent with Article VII of the California Constitution and Section 19130 of the Government Code and the charter of a chartered city or county, as applicable. The public agency may, but is not required to, offer a project applicant the option to pay those fees and subject a project to this process.

(2) The amount of the fees charged by the public agency pursuant to this subdivision shall be conditioned upon the natural gas pipeline safety enhancement project applicant agreeing to that amount and electing to proceed with the retention of a third party pursuant to this subdivision.

(3) All fees paid by a natural gas pipeline safety enhancement project applicant shall be used exclusively for analysis of that applicant's application for certification.

SEC. 5. Section 21168.6 of the Public Resources Code is amended to read:

21168.6. In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission or in an action or proceeding against a public agency involving a natural gas pipeline safety enhancement project, the writ of mandate shall lie only from the Supreme Court to that commission or public agency.

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

SEC. 7. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety*

within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to achieve the timely completion of natural gas pipeline safety enhancements, including programs for maintenance and operation enhancements, and to contribute to the public's confidence in the safety of natural gas pipelines and their ongoing maintenance and operation, thereby protecting public health and safety, it is necessary for this act to take effect immediately.