



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
May 6, 2008

Honorable Members of the
Law and Legislation Committee

Subject: Legislative Position: Support SB 1700 to add Section 2775.8 to the Public Utilities Code, Gas Corporations relating to Underground Natural Gas Storage Facilities.

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee adopt a support position on SB 1700.

Contact: Michelle Heppner, Special Projects Manager, (916) 808-1226

Presenters: Michelle Heppner, Special Projects Manager

Department: Office of the City Manager

Division: Governmental Affairs

Organization No: 0310

Description/Analysis

Issue: Councilmember McCarty requested that staff bring forward SB 1700 for the Committee's consideration.

Senate Bill 1700, authored by Senator Darrel Steinberg, would impose strict liability on a gas corporation that, on or after January 1, 2009, commences operation of an underground natural gas storage facility that is located in an urban area under residential properties. Currently, no statute exists specifically related to the standard of liability imposed on a gas corporation related to the operation of an underground natural gas storage facility under a residential area in an urban setting. This bill will add a section to make gas corporations strictly liable for any damages to persons or property resulting from the operation of the facility in a residential area. SB 1700 would not apply if residential dwellings are constructed on property located over an underground natural gas facility after that facility has commenced operation.

In the absence of legislation imposing strict liability, that is liability without fault, on a gas corporation for damages that result from the operation of an underground natural gas facility, a person who suffers damages as a result of the operation of the facility would have to prove that the gas corporation beached its duty to operate the facility using ordinary care under all the circumstances. The

standard is that of the ordinary prudent or reasonable person. Strict liability would ease the burden of proof, generally requiring only proof that damage occurred from the operation of the storage facility.

Introduction of SB 1700 was triggered by an application by Sacramento Natural Gas Storage, LLC. (SNGS) to the California Public Utilities Commission (CPUC) for a Certificate of Public Convenience and Necessity (CPCN) for an underground natural gas storage facility falling within the boundaries of the City of Sacramento and County of Sacramento. A full description of the SNGS project is available in Attachment 2 of this report.

Policy Considerations: Senate Bill 1700 would impose strict liability on a gas corporation which would ease the burden of proof for residents in the event damages occurred from the operation of gas storage facility.

Environmental Considerations: None.

Committee/Commission Action: None.

Rationale for Recommendation: Gas migration, risk of explosion, and well abandonment are predominant concerns of the community. Senate Bill 1700 would ease the burden of proof for residents in the event of a reservoir failure, and would better ensure that residents are compensated.

Sacramento Natural Gas Storage LLC has submitted a letter to Senator Steinberg dated March 25, 2008 indicating that it does not oppose SB1700 as currently drafted, with its attendant imposition of strict liability (see Attachment 3).

Financial Considerations: SB 1700 would not result in any direct cost to the City.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: _____



Michelle Heppner
Special Projects Manager

Recommendation Approved:



RAY KERRIDGE
City Manager

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Attachment 1

Background

Introduction of SB 1700 was triggered by an application by Sacramento Natural Gas Storage, LLC. (SNGS) to the California Public Utilities Commission (CPUC) for a Certificate of Public Convenience and Necessity (CPCN) for an underground natural gas storage facility falling within the boundaries of the City of Sacramento and County of Sacramento.

The underground storage portion of the facility is located roughly 3,800 feet below approximately 700 homes and 40 industrial properties, within the following boundaries: Elder Creek Road to the north, Florin Road to the south, 75th Street to the west, and Union Pacific Railroad to the east. Additionally the project includes a wellhead site which would include injection/withdrawal wells and associated equipment; roughly two miles of underground pipelines; and a compressor station.

Natural gas was previously extracted from this site until approximately 1987 when the natural gas production was depleted. At that time, the wells and appurtenant facilities were capped and abandoned in accordance with regulations set forth by the California Department of Conservation, Division of Oil Gas and Geothermal Resources (DOGGR).

Under Section 2775.8 of the Public Utilities Code, gas storage facilities would be required to comply with the California Environmental Quality Act (CEQA) and other regulatory standards as they pertain to potential environmental impacts.

Gas storage companies are allowed to establish gas storage facilities in natural reservoirs beneath the earth's surface in order to store and distribute gas to clients, including local municipal utilities districts. Because property owners own certain rights to the land beneath their property, they would, conceptually, own some part of the reservoir that is used as a gas storage facility beneath them. The storage rights owned by landowners are separate from mineral rights, and the operator would be required to obtain storage rights from each of the landowners above the reservoir.

The CPUC has regulatory jurisdiction over 100,000 miles of utility-owned natural gas pipelines, which transported 78% of the total amount of natural gas delivered to California's gas consumers in 2005. The CPUC is also the lead agency under CEQA in permitting underground natural gas storage facilities. Consideration of the application for a Certificate is accompanied by the preparation of an environmental impact report (EIR). As part of its process the CPUC conducts geotechnical analysis to determine whether the geological formations are suitable for safe, long-term gas storage. The CPUC also conducts a rigorous risk analysis to ensure that the underground storage and all surface conveyance facilities pass stringent safety and risk standards.

Approval of underground storage is also required from the DOGGR, which monitors gas fields on an annual basis once they are permitted. Other agencies which can be involved in permitting and siting include the Office of the State Fire Marshal, Pipeline Safety Division; State Water Resources Control Board and Regional Water Quality Control Boards; California Department of Fish and Game; and cities and counties.

The City would require a special permit for the construction and operation of the reservoir.

Subject: Support Position on SB 1700

May 6, 2008

Attachment 2

May 6, 2008

The Honorable Darrell Steinberg
California State Senate
State Capitol, Room 4035
Sacramento, CA 95814
ATTN: Legislative Director

SUBJECT: Support SB 1700 Underground Natural Gas Storage Facilities.

Dear Senate Member Steinberg:

On behalf of the City of Sacramento, I am pleased to write in support of SB 1700. SB 1700 would impose strict liability on a gas corporation for any damages resulting from the operation of an underground natural gas storage facility. Imposition of strict liability is appropriate, and would ensure that Sacramento Natural Gas Storage, LLC. would assume appropriate legal and financial responsibility for any loss or injury incurred as a result of an explosion, migration of gas or any other form of hazard.

Thank you for introducing this important legislation.

Sincerely,

SANDY SHEEDY, Chair
Law and Legislation Committee

cc: Senator Dave Cox
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates



8031 Fruitridge Road, Suite B
Sacramento, CA 95820
(916) 388-2088

March 25, 2008

The Honorable Darrell Steinberg
California State Senator
Capitol Office, Room 576
Sacramento, CA 95814

Subject: SB 1700

Dear Senator Steinberg:

As now written, SB 1700 would apply to the natural gas storage facility ("Facility") proposed by Sacramento Natural Gas Storage LLC ("SNGS") and located near Power Inn Road north of Florin Road in the City of Sacramento.

The SNGS Facility is intended to meet the needs of SMUD and other public and private users for a reliable source of clean, green energy in the form of natural gas. Indeed, SMUD has executed a lease for a substantial portion of the storage capacity subject only to issuance of the necessary certificates, permits and approvals. A copy of SMUD's letter to the California Public Utility Commission is enclosed for your reference.

Please be advised that SNGS strongly believes that this storage Facility will be completely safe, quite appropriate for the proposed location and very beneficial to the landowners, neighbors and the community as a whole. SNGS' belief is reinforced by multiple reports from highly qualified experts whose names and qualifications are available upon request. SNGS is prepared to back its beliefs by appropriate commitments to its neighbors as to the manner in which the Facility will be designed, built and operated. Accordingly, I am pleased to advise that SNGS does not oppose the imposition of strict liability by SB 1700 as now written and will also abide by the terms of its leasing documents which include broad form indemnity and liability insurance provisions.

Honorable Darrell Steinberg
March 25, 2008
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Should you have any questions concerning the foregoing, please do not hesitate to contact the undersigned or the SNGS attorney, Jack Diepenbrock at Diepenbrock Harrison, telephone (916) 492-5000.

Very truly yours,

Don Russell

Enclosures

AMENDED IN SENATE APRIL 16, 2008

SENATE BILL

No. 1700

Introduced by Senator Steinberg

February 22, 2008

An act to add Section 2775.8 to the Public Utilities Code, relating to gas corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1700, as amended, Steinberg. Gas corporations: underground natural gas storage facilities.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including gas corporations. Under the Public Utilities Act, a gas corporation is generally defined to mean every corporation or person owning, controlling, operating, or managing any gas plant for compensation within this state. A gas plant includes all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate, among other things, the underground storage of natural gas.

This bill, *except as specified*, would make a gas corporation that, on or after January 1, 2009, commences operation of an underground natural gas storage facility, *as defined*, that is located in an ~~urban~~ *urbanized* area, *as defined*, under residential properties liable for any damages resulting from the operation of the facility.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 2775.8 is added to the Public Utilities
2 Code, to read:

3 ~~2775.8. A gas corporation that, on or after January 1, 2009,~~
4 ~~commences operation of an underground natural gas storage facility~~
5 ~~that is located in an urban area under residential properties is liable~~
6 ~~for any damages to persons or property resulting from the operation~~
7 ~~of the facility. The standard of liability pursuant to this section is~~
8 ~~strict liability.~~

9 2775.8. (a) *As used in this section:*

10 (1) *“Commences operation” excludes an application for the*
11 *expansion of an existing facility.*

12 (2) *“Facility” includes, but is not limited to, the wellhead site,*
13 *including injection and withdrawal wells, a compressor station,*
14 *and pipeline connections between the wells and compressor station*
15 *and between the compressor station and existing utility natural*
16 *gas pipelines.*

17 (3) *“Urbanized area” has the same meaning as defined in*
18 *Section 21071 of the Public Resources Code.*

19 (b) *A gas corporation that, on or after January 1, 2009,*
20 *commences operation of an underground natural gas storage*
21 *facility that is located in an urbanized area under residential*
22 *properties is liable for any damages to persons or property*
23 *resulting from the operation of the facility.*

24 (c) *The standard of liability pursuant to this section is strict*
25 *liability. This section does not apply if residential dwellings are*
26 *constructed on property located over an underground natural gas*
27 *facility after that facility has commenced operation.*

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SENATE ENERGY, UTILITIES AND COMMUNICATIONS COMMITTEE
CHRISTINE KEHOE, CHAIRWOMAN

SB 1700 - Steinberg		Hearing
Date: April 1, 2008	S	
As Introduced: February 22, 2008		Non-FISCAL B
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DESCRIPTION

Current law requires an operator of a proposed underground natural gas storage facility to apply to the California Public Utilities Commission (CPUC) for a Certificate of Public Convenience and Necessity (CPCN) before beginning operation. A natural gas distribution utility or independent storage operator which already possesses a CPCN may need to undergo CEQA review for expansions of existing capacity.

Current law requires the CPUC to consider, before issuing a CPCN for an underground natural gas storage facility, community values, recreation and park areas, historical and aesthetic values, and influence on the environment.

Current law requires the Division of Oil, Gas and Geothermal Resources within the Department of Conservation (DOGGR) to approve and supervise the drilling, operation, maintenance, and abandonment of underground natural gas storage facilities to prevent damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.

This bill imposes strict liability on a gas corporation for damages resulting from the operation of a natural gas storage facility which commences operation on or after January 1, 2009.

BACKGROUND

California's Reliance on Natural Gas . Compared to most other states, California uses less fossil fuel. This lower reliance on fossil fuel is due to moderate climate, the availability of hydroelectric and nuclear power, and the continuing and growing use of renewable energy. However, the predominant fuel for electricity generation and heating in California remains natural gas.

California imports approximately 85% of its natural gas supply. In 2005, California customers received 37% of their natural gas supply from basins located in the Southwest, 23% from Canada, 25% from the Rocky Mountains, and 15% from basins located within California.

Natural gas from out-of-state production basins is delivered into California via the interstate natural gas pipeline system which is comprised of five major interstate pipelines. Most of the natural gas is delivered into the PG&E and SoCalGas intrastate natural gas transmission pipeline systems (commonly referred to as California's "backbone" natural gas pipeline system). Natural gas on the utilities' backbone pipeline systems is then delivered into the local transmission and distribution pipeline systems, or to natural gas storage fields.

While mainline gas transmission lines provide the crucial link between producing area and marketplace, underground natural gas storage facilities help maintain the system's reliability and its capability to transport gas supplies efficiently and without interruption. Being able to store gas as backup ensures supply availability to consumers during periods of heavy demand by supplementing pipeline capacity. Storage also enables greater system efficiency by allowing more level production and transmission flows.

Natural gas storage also provides significant price benefits, enabling customers to purchase excess supplies when prices are low (generally April to October) and inject those supplies into storage, and to withdraw storage supplies when prices are high (October to April).

Natural gas storage plays an essential role in meeting the state's delivery requirements. Significant curtailments would occur without these storage facilities, and it would be much

more difficult to properly operate the existing pipeline system. Without these facilities, the need for additional natural gas pipeline capacity would grow significantly.

What is a Underground Natural Gas Storage Facility ? Three types of natural gas storage facilities are currently in use in the United States: abandoned salt caverns, water aquifers, and old production fields. In California, only old production fields are currently used as storage facilities. An old, pressurized production field is considered the most desirable by storage facility developers for several reasons: because the field was already used for gas production, the geology of the reservoir is generally well-known, and the cap rock covering the permeable basin holds natural gas in very well, while water below keeps it pressurized for easier withdrawal.

Above ground facilities appurtenant to the underground reservoir generally include:

- Injection wells to insert gas into the underground reservoir;

- Extraction wells to remove the gas from the underground reservoir;

- A well pad at ground level above the underground reservoir where the injection and extraction wells are located;

- A compressor station to compress gas to a pressure great enough to allow it to be pushed in the reservoir;

- Water disposal and observation wells to monitor gas levels and water levels in the reservoir; and

- Tie points to a gas utility main so that gas can be supplied to the reservoir during market surplus and then extracted from the reservoir and distributed during time of peak demand.

Regulation . The CPUC has regulatory jurisdiction over 100,000 miles of utility-owned natural gas pipelines, which transported 78% of the total amount of natural gas delivered to California's gas consumers in 2005 and is also the lead agency in permitting underground natural gas storage facilities.

In order to store gas underground a CPCN is required which also triggers an environmental impact report (EIR). Once an application is filed special geotechnical analysis is conducted to ensure that the geological formations are suitable for safe,

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long-term gas storage. Additionally, a rigorous risk analysis is undertaken to ensure that the underground storage and all surface conveyance facilities pass stringent safety and risk standards. When a draft EIR is available, the CPUC will hold a public meeting to both explain the findings of the EIR and accept public comment on those findings.

Approval of underground storage is also required from DOGGR which monitors fields on an annual basis once they are permitted. Other agencies which can be involved in permitting and siting include the Office of the State Fire Marshal, Pipeline Safety Division; State Water Resources Control Board and Regional Water Quality Control Boards; California Department of Fish and Game; and cities and counties.

Current Storage Facilities . California has nine underground natural gas storage facilities. PG&E's storage fields include the Pleasant Creek, McDonald Island, and Los Medanos storage facilities in Northern California. SoCalGas (Sempra) owns Honor Rancho, Goleta, Aliso Canyon, and Playa Del Rey storage facilities in Southern California. There are two independent storage facilities - Wild Goose Storage in Butte County in Northern California and the Lodi Gas Field in the San Joaquin Valley.

Safety History . The CPUC reports that it is unaware of any major accidents associated with underground natural gas storage facilities in California. They additionally opine that "surface facilities pose some risk potential for fire if the buried gas pipelines leak, or are ruptured as a result of natural disaster or negligence. Because of the inherent risk associated with surface conveyance of natural gas, a health risk assessment and a safety study are conducted in addition to CEQA environmental analysis."

SoCalGas, which owns and operates four facilities in Southern California, reports that it is in the process of decommissioning the Montebello field in the Los Angeles area. All of the natural gas is being withdrawn due to migration to adjacent fields and the site abandoned. No releases into the atmosphere occurred. Three homes were purchased and torn down to provide access to re-enter the wells. Thereafter the storage facility was retrofitted and monitoring was increased to ensure the safety of the field.

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In 2003 an emergency shutdown valve at the Playa del Rey storage field (also a SoCalGas facility) malfunctioned and released natural gas to the atmosphere. There was some oil lying in the pipeline and this was carried with the gas into the air in the form of a fine mist. The oil settled on nearby residences. SoCalGas indicates that it took full responsibility and cleaned all of the oil from houses, cars, etc., and where there was damage that could not be cleaned the items were replaced.

This same gas field was the subject of a complaint filed by several Playa Del Rey residents in 1999 with the CPUC. The CPUC reports that no conclusive evidence of gas migration has ever been established. Air monitoring is ongoing.

Pacific Gas and Electric reports that it has not had any safety issues associated with the underground portion of its storage facilities. It has however had four incidents since 1974 (e.g. levee failure causing pipeline leakage, meter explosion and fires) involving surface structures and resulting in injury to one employee in 2006.

COMMENTS

1. Sacramento Natural Gas Storage Facility (SNGS) --

Introduction of this measure was triggered by an application by SNGS, Inc. to the CPUC for a CPCN for an underground natural gas storage facility in the City of Sacramento. The affected area is south of Highway 50, east of Highway 99, and centered at the corner of Power Inn Road and 53rd Avenue. About three-fourths of the field is in the City of Sacramento, and one quarter is in Sacramento County. Related structures include the wellhead site including injection and withdrawal wells, a compressor station and approximately two miles of pipeline connections between the wells and compressor station and between the compressor station and existing utility natural gas pipelines. There would also be an interconnect to pipelines and a metering station in Yolo County.

The proposed project would store natural gas in the depleted Florin Gas Field reservoir, which is situated approximately 3,800 feet below the ground surface. Natural gas was previously extracted from the Florin Gas Field

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until approximately 1987 when the natural gas production was depleted. At that time, the wells and appurtenance

facilities were capped and abandoned in accordance with regulations set forth by the DOGGR. Currently, there is no natural gas injection or extraction equipment at any of the proposed project sites.

2. Not Under My Backyard -- The author argues that permitting underground natural gas storage in urban settings is unreasonable and a safety hazard for the community. These facilities do not belong in urban areas but if they are, they should be subject to the highest level of liability for their actions or neglect. As proposed, the SNGS field sits below approximately 700 homes and 40 businesses.

The leading opponent to the placement of the facility (and proponent of this measure) opines that there is a "very real possibility of gas migration and leakage to the surface and the accompanying risk of fire and explosion, contamination of groundwater, and increased homeowners-insurance premiums." They also oppose the facility based on indirect impacts including "additional decreases to the value of the homes in the neighborhood, the difficulty of selling a home - the deed for which would signal ominously to any potential subsequent buyer that the house sits atop billions of cubic feet of explosive natural gas, and the consequent possibility of the flight of current residents and increased neighborhood blight."

The placement of this facility has also raised environmental justice concerns since the affected neighborhoods of "Avondale and Glen Elder are low-income, neighborhoods of color, with a significant immigrant population."

3. Condemnation -- Because the field is located below current structures, the applicant is required to obtain mineral rights from each of the more than 700 residents and 40 businesses. If any property owner refuses to grant the right, once the facility is approved by the CPUC, SNGS can use the powers of eminent domain to secure the rights.

4. Other Affected Storage Facilities -- The CPUC reports

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that, although expansions of current facilities are pending, there are no applications on file for new facilities. A September, 2007 announcement was made by Gill Ranch Storage, LLC and PG&E that they will partner to

develop a new underground natural gas storage facility at Gill Ranch, 25 miles west of Fresno. This is not likely an urban setting that would be affected by this measure. This facility will use depleted sandstone natural gas reservoirs located at a depth of over a mile below the surface. They have yet to file for a CPCN with the CPUC.

Consequently, no other facilities would be affected in the immediate future by this bill.

5. What is Strict Liability ? -- Under this theory of tort liability, there is no standard of culpability or negligence required for liability. Liability is strict, without regard to intent, knowledge, or the degree of care which is exercised by the owner or operator. This issue will be more fully explored by the Senate Judiciary Committee.

6. Clarification Needed -- The author may wish to clarify the following terms and phrases to ensure that this measure only applies to the SNGS site at issue and future sites with similar characteristics.

- a) What is "urban?" This measure generally applies to a facility that is "located in an urban area under residential properties." However urban is not defined. The author may wish to consider using the current definition of "urban" which exists in CEQA in Public Resources Code Section 21071 to clarify the targeted communities.
- b) What is "commences operation?" The existing SoCalGas facilities could file for expansion of storage at those sites and could fall under the category of "urban." The author may wish to clarify that applications for expansions of existing facilities do not fall under the terms of this measure.
- c) What activities would fall under "resulting from the operation of the facility?" It seems logical that

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operation of the compressor, injection and extraction wells, and related above-ground facilities would be included in "operation of the facility" but the author may wish to specifically include these operations.

- d) New residential construction could occur over a

facility that becomes operative after the effective date of this measure and after a facility is in operation. The author may wish to clarify whether strict liability would apply.

7. Double Referral -- This bill has been double referred to the Senate Committee on Judiciary for its consideration.

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POSITIONS

Sponsor:

Author

Support:

The Avondale - Glen Elder Neighborhood Association
Sacramento City Councilmember Kevin McCarty
The Utility Reform Network

Oppose:

None on file.

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Kellie Smith
SB 1700 Analysis
Hearing Date: April 1, 2008