

Senate Bill 350

By: Senators Hecht of the 34th, Tate of the 38th, Harbison of the 15th, Starr of the 44th,  
Butler of the 55th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and  
2 public transportation, so as to permit electric membership corporations to engage in business  
3 as natural gas marketers and to contract with marketers to provide billing and customer  
4 service; to permit persons to perform ancillary services without becoming certificated; to add  
5 and change definitions; to prohibit retroactive increases in the price of natural gas; to prohibit  
6 service charges by marketers relating to changing marketers if the customer has not changed  
7 marketers within the previous 12 months; to change provisions relating to temporary  
8 directives to protect retail customers when the market is no longer competitive; to provide  
9 for rules and regulations relating to the conduct of electric membership corporations in  
10 providing natural gas and related services; to extend the period for which assistance to  
11 low-income persons shall be the primary purpose for moneys in the universal service fund;  
12 to provide for a regulated provider of last resort for certain persons of low income and fixed  
13 income and related rules and regulations; to provide for a regulated provider of natural gas  
14 whose retail customers are not restricted to low-income persons; to provide for methods for  
15 determining rates for such providers; to provide for related matters; to repeal conflicting  
16 laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public  
20 transportation, is amended by striking in its entirety Code Section 46-3-200, relating to  
21 purposes of electric membership corporations, and inserting in lieu thereof a new Code  
22 Section 46-3-200 to read as follows:

23 "46-3-200.

24 An electric membership corporation may serve any one or more of the following purposes:

- 25 (1) To furnish electrical energy and service;  
26 (2) To assist its members in the efficient and economical use of energy;

1 (3) To engage in research and to promote and develop energy conservation and sources  
2 and methods of conserving, producing, converting, and delivering energy; ~~and~~

3 (4) To engage in any lawful act or activity necessary or convenient to effect the  
4 foregoing purposes; and

5 (5) To furnish natural gas and service as authorized by law."

## 6 SECTION 2.

7 Said title is further amended by striking in their entirety paragraphs (25) and (26) of  
8 subsection (b) of Code Section 46-3-201, relating to existence of electric membership  
9 corporations under articles of incorporation and powers of corporations generally, and  
10 inserting in lieu thereof the following:

11 "(25) To assist any other electric membership corporation in the execution of its purposes  
12 and powers under this article; ~~and~~

13 (26) To have and exercise all powers necessary or convenient to effect any or all of the  
14 purposes for which the electric membership corporation is organized;

15 (27) To engage in the natural gas business as a marketer as such term is defined in  
16 paragraph (13) of Code Section 46-4-152, provided that the electric membership  
17 corporation complies with the provisions of Article 5 of Chapter 4 of this title, the  
18 'Natural Gas Competition and Deregulation Act,' and rules and regulations of the  
19 commission promulgated pursuant to said article; and

20 (28) To contract with any marketer as such term is defined in paragraph (13) of Code  
21 Section 46-4-152 to handle billing and provide customer services for such marketer."

## 22 SECTION 3.

23 Said title is further amended by striking in its entirety Code Section 46-4-152, relating to  
24 definitions applicable under Article 5 of Chapter 4 of said title, and inserting in lieu thereof  
25 a new Code Section 46-4-152 to read as follows:

26 "46-4-152.

27 As used in this article, the term:

28 (1) 'Adequate market conditions' means the existence of market conditions in relation to  
29 distribution service within a particular delivery group that have been determined pursuant  
30 to subsection (b) of Code Section 46-4-156 to warrant customer assignment.

31 (2) 'Affiliate' means another person which controls, is controlled by, or is under common  
32 control with such person.

33 (3) 'Ancillary service' means a service that is ancillary to the receipt or delivery of  
34 natural gas, including without limitation storage, balancing, peaking, and customer  
35 services. Notwithstanding any provision of law to the contrary, any person may perform

1 an ancillary service without first becoming certificated pursuant to Code Section  
2 46-4-153.

3 (4) 'Commodity sales service' means the sale of natural gas exclusive of any distribution  
4 or ancillary service.

5 (5) 'Control' includes without limitation the possession, directly or indirectly and whether  
6 acting alone or in conjunction with others, of the authority to direct or cause the direction  
7 of the management or policies of a person. A voting interest of 10 percent or more  
8 creates a rebuttable presumption of control. A voting interest of 25 percent or more is  
9 deemed to constitute control. The term control includes the terms controlling, controlled  
10 by, and under control with and, with respect to electric membership corporations and  
11 their EMC gas affiliates, under common management with.

12 (6) 'Customer assignment' means the process described in subsection (e) of Code Section  
13 46-4-156 whereby retail customers within a particular distribution group who are not  
14 under contract for distribution service from a marketer are randomly assigned to  
15 certificated marketers.

16 (7) 'Customer service' means a function related to serving a retail customer including  
17 without limitation billing, meter reading, turn-on service, and turn-off service.

18 (8) 'Delivery group' means a set of individual delivery points on one or more interstate  
19 pipeline suppliers to a gas company that may be aggregated and utilized for the  
20 distribution of gas to a particular set of retail customers.

21 (9) 'Distribution service' means the delivery of natural gas by and through the intrastate  
22 instrumentalities and facilities of a gas company or of a marketer certificated pursuant to  
23 Code Section 46-4-153, regardless of the party having title to the natural gas.

24 (10) 'Electing distribution company' means a gas company which elects to become  
25 subject to the provisions of this article and satisfies the requirements of Code Section  
26 46-4-154.

27 (10.1) 'Electric membership corporation' or 'EMC' means any person defined in  
28 paragraph (3) or (5) of Code Section 46-3-171.

29 (10.2) 'Electricity activities' means all activities associated with the generation,  
30 transportation, marketing, and distribution of electricity.

31 (10.3) 'EMC gas affiliate' means a separately organized person, the majority interest of  
32 which is owned or held by or, with respect to a cooperative, managed by one or more  
33 cooperatives or electric membership corporations and which applies to the commission  
34 for a certificate of authority pursuant to Code Section 46-4-153.

35 (11) 'Firm' means a type of distribution service which ordinarily is not subject to  
36 interruption or curtailment.

1 (11.1) 'Gas activities' means all activities associated with the transportation, marketing,  
 2 and distribution of natural gas conducted by a person certificated pursuant to Code  
 3 Section 46-4-153. Such term shall not mean the generation, transportation, marketing,  
 4 or distribution of liquefied petroleum gas.

5 (12) 'Interruptible' means a type of distribution service which is subject to interruption  
 6 or curtailment.

7 (12.1) 'Majority interest' means the ownership of 51 percent or more of:

8 (A) The partnership interest in a general or limited partnership;

9 (B) The membership interests of a limited liability company; or

10 (C) The stock in a for profit corporation which entitles the shareholder to vote and  
 11 share in common or preferred dividends.

12 (13) 'Marketer' means any person certificated by the commission to provide commodity  
 13 sales service or distribution service pursuant to Code Section 46-4-153 or ancillary  
 14 services incident thereto.

15 (14) 'Person' means any corporation, whether public or private; company; individual;  
 16 firm; partnership; or association, including a cooperative or an electric membership  
 17 corporation.

18 (15) 'Retail customer' or 'retail purchaser' means a person who purchases commodity  
 19 sales service or distribution service and such purchase is not for the purpose of resale.

20 (16) 'Straight fixed variable' means a rate form in which the fixed costs of providing  
 21 distribution service are recovered through one or more fixed components and the variable  
 22 costs are recovered through one or more variable components.

23 (17) 'Winter heating season' means the calendar days from October 1 of one year through  
 24 March 31, inclusive, of the following year."

#### 25 **SECTION 4.**

26 Said title is further amended in Code Section 46-4-156, relating to customer assignment  
 27 methodology, determination of adequate market conditions and effect of such determination,  
 28 notice to customers, extensions, changes in marketers, and deposits, by striking subsection  
 29 (g) and inserting in lieu thereof the following:

30 "(g) Notwithstanding any other provision of this article, a retail customer shall be  
 31 authorized to change marketers at least once a year without incurring any service charge  
 32 relating to such change to an alternative marketer. No marketer shall charge any retail  
 33 customer a service charge relating to a change to an alternative marketer if such retail  
 34 customer has not changed marketers within the previous 12 months. Except as otherwise  
 35 provided in a legally binding contract, no marketer shall require a notice period from a  
 36 retail customer before changing to an alternative marketer. A marketer which violates this

1 subsection shall be subject to any and all remedies set out in Part 2 of Article 15 of Chapter  
 2 1 of Title 10, the 'Fair Business Practices Act of 1975.'"

### 3 SECTION 5.

4 Said article is further amended in Code Section 46-4-157, relating to temporary directives,  
 5 by striking subsection (b) and inserting in lieu thereof the following:

6 "(b) If, in an expedited hearing pursuant to the provisions of Chapter 13 of Title 50, the  
 7 'Georgia Administrative Procedure Act,' the commission determines upon clear and  
 8 convincing evidence that market conditions are no longer competitive within a specific  
 9 delivery group, then the commission, on an emergency basis, may by order temporarily  
 10 impose such directives on marketers as are required to protect the interests of retail  
 11 customers ~~in the state~~ within a specific delivery group, including, but not limited to, price  
 12 regulations on the marketers. For purposes of this subsection, ~~market conditions shall be~~  
 13 ~~considered competitive as long as there are at least three marketers soliciting and providing~~  
 14 ~~distribution services to residential and small business customers in this state; provided,~~  
 15 ~~however, that, in any case where there are three or less marketers soliciting and providing~~  
 16 ~~distribution services to residential and small business customers in this state, market~~  
 17 ~~conditions shall not be considered competitive if the commission upon clear and~~  
 18 ~~convincing evidence determines that as a result of collusion among such marketers, prices~~  
 19 ~~for natural gas paid by retail customers are not being adequately constrained by market~~  
 20 ~~forces and are significantly higher than such prices would be if they were constrained by~~  
 21 ~~market forces~~ market conditions shall not be considered competitive if collusion between  
 22 two marketers or collusion among more than two marketers has resulted in fixing prices  
 23 for more than 50 percent of the retail customers in a specific delivery group. In no event  
 24 shall such emergency directives extend beyond the first day of July immediately following  
 25 the next full annual session of the General Assembly after the imposition of such directives.  
 26 Any such directives shall be drawn as narrowly as possible to accomplish the purpose of  
 27 protecting the public on an interim basis. ~~Such directives~~ A commission determination  
 28 regarding the competitiveness of market conditions in accordance with this subsection and  
 29 directives imposed as a result of such determination shall be immediately reviewable in the  
 30 Superior Court of Fulton County in the same manner and subject to the same procedures  
 31 as the review of any other contested case under the provisions of Code Section 50-13-19."

### 32 SECTION 6.

33 Said title is further amended in Code Section 46-4-160, relating to the commission's  
 34 authority regarding marketers, marketers' billing and sales practices, access to the books and  
 35 records of marketers, applicability of the 'Fair Business Practices Act of 1975,' and

1 publication and broadcast of marketers' prices, by striking subsection (c) and inserting a new  
2 subsection (c) and a new subsection (k) to read as follows:

3 "(c) A marketer shall not refuse to sell gas to a potential firm retail customer within the  
4 territory covered by the marketer's certificate of authority if the sale can be made by the  
5 marketer pursuant to the rules for service authorized by the marketer's certificate of  
6 authority and upon terms that will provide the marketer with just and adequate  
7 compensation. Except as otherwise provided by subsection (k) of this Code section and by  
8 Code Sections 46-4-166 and 46-4-168, the ~~The~~ price at which a marketer sells gas shall not  
9 be ~~fixed~~ regulated by the commission."

10 "(k) The price for natural gas billed to a retail customer shall not exceed the marketer's  
11 published price effective when the retail customer used the natural gas."

## 12 SECTION 7.

13 Said title is further amended by adding between Code Section 46-4-160.1 and 46-4-161 a  
14 new Code Section 46-4-160.2 to read as follows:

15 "46-4-160.2.

16 (a) No later than September 30, 2002, the commission shall adopt rules regarding a code  
17 of conduct and enforcement procedures to govern the relationship between an electric  
18 membership corporation and its EMC gas affiliate. The rules promulgated under this Code  
19 section shall be designed to prevent cross-subsidization between the provision of electricity  
20 and the provision of natural gas services, to encourage competition by EMC gas affiliates  
21 in the marketing of natural gas to retail customers, and to protect the privacy of both  
22 electric and gas customers.

23 (b) The code of conduct rules adopted by the commission under this Code section shall  
24 include the requirements set forth in this subsection, as well as such other rules as the  
25 commission shall determine are necessary to protect electric and gas customers and  
26 promote competition:

27 (1) To ensure that cross-subsidizations do not occur between the electricity services of  
28 an electric membership corporation and the gas activities of its EMC gas affiliate, the  
29 rules adopted by the commission shall provide that each electric membership corporation  
30 having an EMC gas affiliate shall:

31 (A) Fully allocate all electricity activities costs and gas activities costs, including costs  
32 for any shared services, between the electric membership corporation's electricity  
33 activities and the gas activities of its EMC gas affiliate, in accordance with the  
34 applicable uniform system of accounts and generally accepted accounting principles,  
35 as applicable;

1 (B) Develop and maintain a cost allocation manual, approved by the commission,  
 2 describing the electric membership corporation's methods of cost allocation and such  
 3 other information and policies reasonably required by the commission to ensure  
 4 compliance with this article and the code of conduct promulgated by the commission.

5 Such manual shall:

6 (i) Establish rules for the pricing of transactions between an electric membership  
 7 corporation and its EMC gas affiliate, including the transfer of assets among the two;

8 (ii) Prohibit discriminatory pricing among similarly situated gas customers;

9 (iii) Provide that any loans from the electric membership corporation to its EMC gas  
 10 affiliate shall be at market rates and may not be tied directly to any loans from the  
 11 federal or state government;

12 (iv) Require the electric membership corporation and its EMC gas affiliate to  
 13 maintain separate books of accounts and records; and

14 (v) Require the annual filing of a statement with the commission certifying the  
 15 compliance by the electric membership corporation and its EMC gas affiliate with the  
 16 approved cost allocation manual; and

17 (C) Not charge any costs of the EMC gas affiliate to the electric membership  
 18 corporation's electricity customers; and

19 (2) The rules adopted by the commission shall provide that each electric membership  
 20 corporation, upon certification of its gas affiliate, shall provide to the commission a list  
 21 of its electric customers showing name and address for each such customer. The  
 22 commission shall make such list available to all gas marketers.

23 (c) An electric membership corporation may make and maintain investments in, lend funds  
 24 to, and guarantee the debts and obligations of an EMC gas affiliate in total not to exceed  
 25 10 percent of such electric membership corporation's net utility plant.

26 (d) The commission shall accommodate the organizational structures of electric  
 27 membership corporations; shall prohibit an electric membership corporation and any  
 28 related entity from sharing directors but shall not prohibit an electric membership  
 29 corporation and any related entity from sharing officers or employees; and shall permit the  
 30 use of the electric membership corporation's trade name and logo by the EMC gas affiliate,  
 31 without remuneration or cost accounting, but subject to the provisions of Part 2 of Article  
 32 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' and Part 1 of Article  
 33 15 of Chapter 1 of Title 10, the 'Uniform Deceptive Trade Practices Act.'

34 (e) Notwithstanding anything to the contrary contained in this Code section, the  
 35 commission shall make accommodation for the specific legal requirements imposed by  
 36 state or federal laws applicable to electric membership corporations and other  
 37 cooperatives."



1 under this article on the same basis as any other person as defined in Code Section  
 2 46-4-152. The creation, capitalization, or control of (1) an EMC gas affiliate engaged in  
 3 activities subject to the provisions of this article and the rules and regulations established  
 4 by the commission or (2) other persons providing ancillary services shall be deemed to be  
 5 among the purposes of an electric membership corporation as specified in paragraphs (2)  
 6 and (3) of Code Section 46-3-200. Nothing in this article shall be deemed to increase or  
 7 decrease the authority and jurisdiction of the commission with respect to such electric  
 8 membership corporation except as to gas activities undertaken by the electric membership  
 9 corporation or its EMC gas affiliate as authorized under this chapter."

#### 10 **SECTION 10.**

11 Said title is further amended by inserting new Code sections to be designated Code Sections  
 12 46-4-166, 46-4-167, 46-4-168, and 46-4-169 to read as follows:

13 "46-4-166.

14 (a) The commission shall designate a certificated marketer as provider of last resort to  
 15 serve as a regulated provider of natural gas to persons of low income or fixed income who  
 16 are eligible for public assistance in paying for natural gas in accordance with Code Section  
 17 46-1-5. The commission shall regulate the rates and terms and conditions for providing  
 18 natural gas to such persons. The rates established by the commission for the provider of  
 19 last resort shall reflect a reasonable relationship with relevant index prices for the period,  
 20 as published in *Inside FERC's Gas Market Report, Natural Gas Intelligence*, or similar  
 21 reliable reports or as determined by trading on the New York Merchantile Exchange. The  
 22 provider of last resort shall be subject to the provisions of Chapters 1 and 2 of this title and  
 23 of this chapter to the extent that such provisions do not conflict with this Code section or  
 24 with Code Section 46-4-167 or 46-4-169; in the event of a conflict, this Code section and  
 25 Code Sections 46-4-167 and 46-4-169 shall govern the provider of last resort.

26 (b) If natural gas service by a provider other than the provider of last resort has been  
 27 terminated for failure to pay by a person who is eligible for service by the provider of last  
 28 resort, full payment to the previous provider shall not be required before commencing  
 29 service with the provider of last resort. Except for any portion which may be paid by  
 30 public assistance, persons who receive natural gas from the provider of last resort in  
 31 accordance with this Code section shall be expected to pay their entire cost of natural gas,  
 32 but the commission may provide by rule or regulation for extending payments for the cost  
 33 of natural gas for a winter season over 12 months.

1 46-4-167.

2 The commission may provide by rule or regulation for the termination of natural gas  
3 service from the provider of last resort for any retail customer who has failed to pay within  
4 30 days of the due date at least 50 percent of the amount due on a regular bill or an  
5 extended payment plan.

6 46-4-168.

7 The commission shall designate a certificated marketer to serve as a regulated provider of  
8 natural gas to any retail consumer who desires to receive natural gas from a regulated  
9 provider. The commission may designate the same marketer to act as provider of last  
10 resort in accordance with Code Section 46-4-166 and regulated provider in accordance with  
11 this Code section. The rates established by the commission for such regulated provider  
12 shall provide a reasonable of return for the provider's investment and efforts. The  
13 regulated provider designated in accordance with this Code section shall be subject to the  
14 provisions of Chapters 1 and 2 of this title and of this chapter to the extent that such  
15 provisions do not conflict with this Code section or with Code Section 46-4-169; in the  
16 event of a conflict, this Code section and Code Section 46-4-169 shall govern the regulated  
17 provider.

18 46-4-169.

19 The commission shall conduct an annual review of the performance of the provider of last  
20 resort designated in accordance with Code Section 46-4-166 and the regulated provider  
21 designated in accordance with Code Section 46-4-168. Upon completion of the annual  
22 review, the commission may designate one or more different certificated marketers to serve  
23 as provider of last resort and regulated rate provider."

24 **SECTION 11.**

25 All laws and parts of laws in conflict with this Act are repealed.