

House Bill 1117

By: Representative Powell of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 4 of Title 46 of the Official Code of Georgia Annotated, the
2 "Natural Gas Competition and Deregulation Act," so as to insert additional legislative
3 findings; to revise and add definitions; to provide that no certificate of authority shall be
4 required to provide customer services; to provide for an independent nonaffiliated forecasting
5 agent and an independent nonaffiliated auditor; to provide for commission regulation of the
6 terms and rates for providing ancillary services and customer services to marketers; to
7 provide for service quality standards for electing distribution companies; to provide for fines
8 for unacceptable performance; to provide for commission actions to promote a competitively
9 neutral gas marketplace; to provide for rules of conduct and enforcement procedures to
10 govern the relationship between an electric membership corporation and its EMC gas affiliate
11 and between an electric utility and its electric utility gas affiliate; to provide that an EMC gas
12 affiliate and an electric utility gas affiliate may be certificated to provide natural gas
13 commodity sales service, customer services, and ancillary services; to provide for
14 designation of a provider of last resort; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Article 5 of Chapter 4 of Title 46 of the Official Code of Georgia Annotated, the "Natural
18 Gas Competition and Deregulation Act," is amended in Code Section 46-4-151, relating to
19 legislative findings and intent, by striking subsection (a) and inserting in lieu thereof the
20 following:

21 "(a) The General Assembly finds:

22 (1) It is in the public interest to establish a new regulatory model for the natural gas
23 industry in Georgia to reflect the transition to a reliance on market based competition as
24 the best mechanism for the selection and provision of natural gas services at the most
25 efficient pricing; and

1 (2) In order to ensure the implementation of this new reliance on market based
 2 competition, any regulatory impediments, whether statutory or administrative, to
 3 competition for natural gas services must be removed in those areas of the natural gas
 4 industry where competition actually exists;

5 (3) During the transition period to a fully mature natural gas marketplace, it is in the best
 6 interests of the citizens of the State of Georgia that the competitive market be given the
 7 opportunity to flourish without unnecessary regulation;

8 (4) During the transition period to a fully mature competitive market, it is in the best
 9 interests of the citizens of the State of Georgia to provide sufficient marketplace
 10 monitoring and performance standards to ensure that neither an electing distribution
 11 company nor any of its affiliated companies maintain a competitive advantage over the
 12 unregulated natural gas marketers; and

13 (5) It is in the best interests of Georgia consumers to:

14 (A) Promote a diversity of natural gas marketers by giving consumers effective choice
 15 in selecting service providers;

16 (B) Encourage innovation and market access for cost effective natural gas services and
 17 goods;

18 (C) Recognize the continuing emergence of competitive natural gas marketers through
 19 the development and implementation of flexible regulatory treatment; and

20 (D) Promote competition in the provision of natural gas services and goods by
 21 avoiding subsidies."

22 SECTION 2.

23 Said article is further amended by striking in its entirety Code Section 46-4-152, relating to
 24 definitions applicable under said article, and inserting in lieu thereof a new Code Section
 25 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.

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

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

10 (6) 'Customer assignment' means the process described in subsection (e) of Code Section
11 46-4-156 whereby retail customers within a particular distribution group who are not
12 under contract for distribution service from a marketer are randomly assigned to
13 certificated marketers.

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

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

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

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

25 (10.1) 'Electric membership corporation' or 'EMC' means any person defined in
26 paragraph (3) or (5) of Code Section 46-3-171.

27 (10.2) 'Electric utility' means any retail supplier of electricity whose rates are fixed by
28 the commission.

29 (10.3) 'Electric utility gas affiliate' means a separately organized person, the majority
30 interest of which is owned or held by one or more electric utilities and which applies to
31 the commission for a certificate of authority pursuant to Code Section 46-4-153.

32 (10.4) 'Electricity activities' means all activities associated with the generation,
33 transportation, marketing, and distribution of electricity.

34 (10.5) 'EMC gas affiliate' means a separately organized person, the majority interest of
35 which is owned or held by or, with respect to a cooperative, managed by one or more
36 cooperatives or electric membership corporations and which applies to the commission
37 for a certificate of authority pursuant to Code Section 46-4-153.

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

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

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

9 (12.1) 'Majority interest' means the ownership of 51 percent or more of:

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

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

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

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

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

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

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

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

27 SECTION 3.

28 Said article is further amended in Code Section 46-4-153, relating to certificates of authority,
29 by striking subsection (a) and inserting in lieu thereof the following:

30 "(a)(1) No person other than a gas company shall sell or offer to sell in intrastate
31 commerce to any retail customer who receives primarily firm service within this state any
32 commodity sales service or distribution service without first obtaining a certificate of
33 authority from the commission covering the territory where such retail customer is
34 located. No certificate of authority shall be required to provide customer service, as
35 defined in Code Section 46-4-152.

1 (2) The commission shall have the authority to issue multiple certificates of authority
2 with respect to a particular territory upon a showing that the applicant:

3 (A) Possesses satisfactory financial and technical capability to render the certificated
4 service;

5 (B) Has a sufficient gas supply to meet the requirements of such service; and

6 (C) Will offer such service pursuant to rules and contract terms which the commission
7 finds economically viable for the territory which the marketer proposes to serve.

8 (3) A showing of public convenience and necessity is not a condition for the issuance of
9 a competing certificate of authority.

10 (4) A certificate of authority shall authorize the marketer to use intrastate capacity
11 available to it from a gas company to provide interruptible distribution service when not
12 required by the marketer to provide firm distribution service."

13 SECTION 4.

14 Said article is further amended by inserting a new Code section to be designated Code
15 Section 46-4-153.1 to read as follows:

16 "46-4-153.1.

17 (a) The commission shall ensure that an electing distribution company and its affiliates
18 have no competitive advantage over nonregulated natural gas marketers by taking the
19 following actions:

20 (1) Selecting an independent nonaffiliated forecasting agent to be responsible for
21 providing daily, monthly, annual, and multiyear interstate capacity forecasts and daily
22 supply requirements and monthly gas supply forecasts; and

23 (2) Selecting an independent nonaffiliated auditor which shall audit:

24 (A) The daily, monthly, and annual accounting of transactions among each electing
25 distribution company, its affiliated companies, and certificated marketers; and

26 (B) Compliance with the provisions of subsections (b) and (c) of Code Section
27 46-4-159.

28 The auditor shall prepare a semiannual audit report to the commission.

29 (b) An electing distribution company shall utilize the forecasts prepared by the forecasting
30 agent in its day-to-day operations and for preparing its annual capacity supply filing in
31 accordance with Code Section 46-4-155. The commission shall review and adjust the rates
32 and terms and conditions of an electing distribution company, without the necessity of
33 complying with Code Section 46-2-23.1, 46-4-155, or 46-4-156 to decrease any operating
34 expenses of the electing distribution company associated with delegating the forecasting
35 and auditing services to independent third parties.

1 (c) Unless a written objection clearly specifying one or more errors or inaccuracies in the
 2 audit report is filed within ten days after the audit report is filed with the commission, the
 3 audit report shall be accepted by the commission. If an objection is filed, the commission
 4 shall conduct an expedited hearing within ten days after the objection is filed to determine
 5 whether to accept the audit report. A final decision shall be issued five days after such a
 6 hearing. An audit report, along with its status as accepted or not accepted by the
 7 commission, shall be admissible in any litigation for damages relating to transactions
 8 described or evaluated in the audit report."

9 **SECTION 5.**

10 Said article is further amended in Code Section 46-4-155, relating to regulation of unbundled
 11 services and capacity supply plans, by striking subsection (c) and inserting in lieu thereof the
 12 following:

13 "(c) An electing distribution company shall offer each type of ancillary service and
 14 customer service to marketers at rates and on terms approved by the commission in
 15 accordance with this article and Code Section 46-2-3.1 until such time as the commission
 16 determines that marketers have reasonably available alternatives to purchasing such service
 17 from the electing distribution company. The commission shall make a separate
 18 determination for each type of service. In making such determinations, the commission
 19 shall consider the following factors:

- 20 (1) The number and size of alternative providers of the service;
- 21 (2) The extent to which the service is available from alternative providers in the relevant
 22 market;
- 23 (3) The ability of alternative providers to make functionally equivalent or substitute
 24 services readily available at competitive prices, terms, and conditions; and
- 25 (4) Other indicators of market power which may include market share, growth in market
 26 share, ease of entry, and the affiliation of providers of a service."

27 **SECTION 6.**

28 Said article is further amended by inserting a new Code section to be designated Code
 29 Section 46-4-158.1 to read as follows:

30 "46-4-158.1.

31 No later than April 1, 2003, the commission shall promulgate rules and regulations
 32 establishing service quality standards for each electing distribution company. The rules
 33 shall outline the minimal acceptable performance standards for posting data on the
 34 electronic bulletin board, meter reading, meter activation and deactivation, call center
 35 response times, lost and unaccounted for gas, and any other performance criteria deemed

1 necessary or desirable by the commission. An electing distribution company shall file with
2 the commission a report each month showing its performance with regard to each standard.
3 Performance by an electing distribution company which is less than minimally acceptable
4 shall be reviewed by the commission, which may impose a fine up \$25,000.00 for such
5 unacceptable performance. A review by the commission in accordance with this Code
6 section shall be concluded within 45 days after the filing of the monthly report by the
7 distribution company."

8 SECTION 7.

9 Said article is further amended in Code Section 46-4-159, relating to conduct for electing
10 distribution companies and response to complaints, by inserting a new subsection to be
11 designated subsection (d) to read as follows:

12 "(d) To promote a competitively neutral natural gas marketplace that provides full and fair
13 competition to all marketers, the commission shall:

14 (1) Require full public disclosure of the terms of any negotiated distribution rate to large
15 customers and allow all marketers to compete for such large customers;

16 (2) Allow all marketers to firm retail customers to make sales of peaking services in
17 proportion to their market share of these services;

18 (3) Prohibit electing distribution companies from providing any unique services from
19 peaking services that are not available for offer by any other firm supplier;

20 (4) Reduce retained storage levels;

21 (5) Adopt and implement, no later than July 1, 2003, a plan to permanently assign all
22 interstate capacity assets that are not part of retained storage to certificated marketers
23 based upon market share;

24 (6) Order the electing distribution company to compensate marketers fully for use of
25 interstate capacity assets retained or controlled by the electing distribution company or
26 its affiliates until implementation of the plan for permanently assigning the interstate
27 capacity assets. This compensation shall be distributed to the marketers based up their
28 market share;

29 (7) Provide for the recovery of bad debt in two components, based upon commodity debt
30 and noncommodity debt;

31 (8) Make rules and regulations and issue orders as necessary to prevent an electing
32 distribution company from restricting or impairing the ability of any certificated marketer
33 to engage in providing customer services and ancillary services or the ability of any other
34 person to engage in providing customer services; and

35 (9) Regulate the terms and rates for provision of ancillary services and customer services
36 to marketers by electing distribution companies."

SECTION 8.

Said article is further amended by adding between Code Section 46-4-160.2 and 46-4-161 a new Code Section 46-4-160.3 to read as follows:

"46-4-160.3.

(a) No later than September 30, 2001, the commission shall adopt rules of conduct and enforcement procedures to govern the relationship between an electric membership corporation and its EMC gas affiliate. The rules promulgated under this Code section shall be designed to prevent cross-subsidization between the provision of electricity and the provision of natural gas services, to encourage competition by EMC gas affiliates in the marketing of natural gas to retail customers, and to protect the privacy of both electric and gas customers.

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

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

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

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

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

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

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

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

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

6 (C) Not charge any costs of the EMC gas affiliate to the electric membership
7 corporation's electricity customers.

8 (2) To protect customer privacy and prevent the misuse of customer information, the
9 rules adopted by the commission shall provide that each electric membership corporation
10 shall not release any proprietary customer information to its EMC gas affiliates without
11 obtaining prior verifiable authorization from the customer, as determined in accordance
12 with rules established by the commission.

13 (c) An electric membership corporation may make and maintain investments in, lend funds
14 to, and guarantee the debts and obligations of an EMC gas affiliate in total not to exceed
15 15 percent of such electric membership corporation's net utility plant.

16 (d) The commission shall accommodate the organizational structures of electric
17 membership corporations; shall prohibit an electric membership corporation and any
18 related entity from sharing directors but shall not prohibit an electric membership
19 corporation and any related entity from sharing officers or employees; and shall permit the
20 use of the electric membership corporation's trade name and logo by the EMC gas affiliate,
21 without remuneration or cost accounting, but subject to the provisions of Part 2 of Article
22 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' and Part 1 of Article
23 15 of Chapter 1 of Title 10, the 'Uniform Deceptive Trade Practices Act.'

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

28 SECTION 9.

29 Said article is further amended by adding between Code Section 46-4-160.2 and 46-4-161
30 a new Code Section 46-4-160.4 to read as follows:

31 "46-4-160.4.

32 (a) No later than September 30, 2002, the commission shall adopt rules of conduct and
33 enforcement procedures to govern the relationship between an electric utility and its
34 electric utility gas affiliate. The rules promulgated under this Code section shall be
35 designed to prevent cross-subsidization between the provision of electricity and the
36 provision of natural gas services, to encourage competition by electric utility gas affiliates

1 in the marketing of natural gas to retail customers, and to protect the privacy of both
2 electric and gas customers.

3 (b) The rules of conduct adopted by the commission under this Code section shall include
4 the requirements set forth in this subsection, as well as such other rules as the commission
5 shall determine are necessary to protect electric and gas customers and promote
6 competition.

7 (1) To ensure that cross-subsidizations do not occur between the electricity services of
8 an electric utility and the gas activities of its electric utility gas affiliate, the rules adopted
9 by the commission shall provide that each electric utility having an electric utility gas
10 affiliate shall:

11 (A) Fully allocate all electricity activities costs and gas activities costs, including costs
12 for any shared services, between the electric utility's electricity activities and the gas
13 activities of its electric utility gas affiliate, in accordance with the applicable uniform
14 system of accounts and generally accepted accounting principles, as applicable;

15 (B) Develop and maintain a cost allocation manual, approved by the commission,
16 describing the electric utility's methods of cost allocation and such other information
17 and policies reasonably required by the commission to ensure compliance with this
18 article and the code of conduct promulgated by the commission. Such manual shall:

19 (i) Establish rules for the pricing of transactions between an electric utility and its
20 electric utility gas affiliate, including the transfer of assets among the two;

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

22 (iii) Provide that any loans from the electric utility to its electric utility gas affiliate
23 shall be at market rates and may not be tied directly to any loans from the federal or
24 state government;

25 (iv) Require the electric utility and its electric utility gas affiliate to maintain separate
26 books of accounts and records; and

27 (v) Require the annual filing of a statement with the commission certifying the
28 compliance by the electric utility and its electric utility gas affiliate with the approved
29 cost allocation manual; and

30 (C) Not charge any costs of the electric utility gas affiliate to the electric utility's
31 electricity customers.

32 (2) To protect customer privacy and prevent the misuse of customer information, the
33 rules adopted by the commission shall provide that each electric utility shall not release
34 any proprietary customer information to its electric utility gas affiliate without obtaining
35 prior verifiable authorization from the customer, as determined in accordance with rules
36 established by the commission.

1 (c) An electric utility may make and maintain investments in, lend funds to, and guarantee
 2 the debts and obligations of an electric utility gas affiliate in total not to exceed 10 percent
 3 of such electric utility's net utility plant.

4 (d) The commission shall accommodate the organizational structures of electric utilities;
 5 shall prohibit an electric utility and any related entity from sharing directors but shall not
 6 prohibit an electric utility and any related entity from sharing officers or employees; and
 7 shall permit the use of the electric utility's trade name and logo by the electric utility gas
 8 affiliate, without remuneration or cost accounting, but subject to the provisions of Part 2
 9 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' and Part
 10 1 of Article 15 of Chapter 1 of Title 10, the 'Uniform Deceptive Trade Practices Act.'

11 (e) Notwithstanding anything to the contrary contained in this Code section, the
 12 commission shall make accommodation for the specific legal requirements imposed by
 13 state or federal laws applicable to electric utilities."

14 **SECTION 10.**

15 Said article is further amended by striking in its entirety Code Section 46-4-164, relating to
 16 construction of article, and inserting in lieu thereof a new Code Section 46-4-164 to read as
 17 follows:

18 "46-4-164.

19 (a) Nothing in this article shall be deemed to apply or impose requirements not otherwise
 20 existing on gas distribution companies owned by any county, municipality, other political
 21 subdivision, or governmental authority of this state; nor are the provisions of this article
 22 intended to increase or decrease the authority and jurisdiction of the commission with
 23 respect to the distribution, sale, or transportation of gas by any county, municipality, other
 24 political subdivision, or governmental authority of this state. Nothing in this article shall
 25 be construed to limit or otherwise affect the existing powers of municipal corporations or
 26 other political subdivisions of this state relating to the granting of franchises or the levying
 27 or imposition of taxes, fees, or charges.

28 (b) Notwithstanding any provision of law to the contrary, including, without limitation,
 29 Article 4 of Chapter 3 of this title, an EMC gas affiliate, as defined in Code Section
 30 46-4-152, of an electric membership corporation organized and operating pursuant to
 31 Article 4 of Chapter 3 of this title may apply for and be granted a certificate of authority
 32 to provide any service as authorized under this article on the same basis as any other
 33 person. The creation, capitalization, or control of (1) an EMC gas affiliate engaged in
 34 activities subject to the provisions of this article and the rules and regulations established
 35 by the commission or (2) other persons providing ancillary services shall be deemed to be
 36 among the purposes of an electric membership corporation as specified in paragraphs (2)

1 and (3) of Code Section 46-3-200. Nothing in this article shall be deemed to increase or
2 decrease the authority and jurisdiction of the commission with respect to such electric
3 membership corporation except as to gas activities undertaken by the electric membership
4 corporation or its EMC gas affiliate as authorized under this chapter.

5 (c) Notwithstanding any provision of law to the contrary, including, without limitation, the
6 provisions of Chapter 3 of this title, an electric utility gas affiliate, as defined in Code
7 Section 46-4-152, may apply for and be granted a certificate of authority to provide any
8 service as authorized under this article on the same basis as any other person. Nothing in
9 this article shall be deemed to increase or decrease the authority and jurisdiction of the
10 commission with respect to such electric utility except as to gas activities undertaken by
11 the electric utility or its gas affiliate as authorized by this chapter."

12 **SECTION 11.**

13 Said article is further amended by inserting a new Code section to be designated Code
14 Section 46-4-166 to read as follows:

15 "46-4-166.

16 Upon determining that a substantial number of residential customers have lost access to
17 natural gas due to termination of service for failure to pay, the commission is authorized
18 to designate a provider of last resort for persons who are eligible for public assistance for
19 natural gas in accordance with Code Section 46-1-5. Any person eligible for public
20 assistance for natural gas may become a retail customer of the provider of last resort
21 without being required to pay in full any debt to a marketer for previous service. No
22 electing distribution company shall be eligible for designation as provider of last resort."

23 **SECTION 12.**

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