

Senate Bill 362

By: Senators Hecht of the 34th, Starr of the 44th, Butler of the 55th, Walker of the 22nd,
Hooks of the 14th 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 provide ancillary service; to permit persons to perform
4 ancillary services without becoming certificated; to add and change definitions; to prohibit
5 retroactive increases in the price of natural gas; to prohibit service charges by marketers
6 relating to changing marketers if the customer has not changed marketers within the previous
7 12 months; to change provisions relating to temporary directives to protect retail customers
8 when the market is no longer competitive; to provide for rules and regulations relating to the
9 conduct of electric membership corporations in providing natural gas and related services;
10 to extend the period for which assistance to low-income persons shall be the primary purpose
11 for moneys in the universal service fund; to provide for a regulated provider of last resort for
12 certain persons of low income and fixed income and related rules and regulations; to provide
13 for a regulated provider of natural gas whose retail customers are not restricted to
14 low-income persons; to provide for methods for determining rates for such providers; to
15 provide for related matters; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
19 transportation, is amended by striking in its entirety Code Section 46-4-152, relating to
20 definitions applicable under Article 5 of Chapter 4 of said title, and inserting in lieu thereof
21 a new Code Section 46-4-152 to read as follows:

22 "46-4-152.

23 As used in this article, the term:

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

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

3 (3) 'Ancillary service' means a service that is ancillary to the receipt or delivery of
4 natural gas, including without limitation storage, balancing, peaking, and customer
5 services. Notwithstanding any provision of law to the contrary, any person, including
6 without limitation an EMC gas affiliate, may perform an ancillary service without first
7 becoming certificated pursuant to Code Section 46-4-153.

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

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

17 (6) 'Customer assignment' means the process described in subsection (e) of Code Section
18 46-4-156 whereby retail customers within a particular distribution group who are not
19 under contract for distribution service from a marketer are randomly assigned to
20 certificated marketers.

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

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

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

29 (10) 'Electing distribution company' means a gas company which elects to become
30 subject to the provisions of this article and satisfies the requirements of Code Section
31 46-4-154.

32 (10.1) 'Electric membership corporation' or 'EMC' means any person defined in
33 paragraph (3) or (5) of Code Section 46-3-171.

34 (10.2) 'Electric utility' means any retail supplier of electricity whose rates are fixed by
35 the commission.

36 (10.3) 'Electricity activities' means all activities associated with the generation,
37 transportation, marketing, and distribution of electricity.

1 (10.4) 'EMC gas affiliate' means a separately organized person, the majority interest of
2 which is owned or held by or, with respect to a cooperative, managed by one or more
3 cooperatives or electric membership corporations and which applies to the commission
4 for a certificate of authority pursuant to Code Section 46-4-153.

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

7 (11.1) 'Gas activities' means all activities associated with the transportation, marketing,
8 and distribution of natural gas conducted by a person certificated pursuant to Code
9 Section 46-4-153. Such term shall not mean the generation, transportation, marketing,
10 or distribution of liquefied petroleum gas.

11 (11.2) 'Gas utility' means any individual, firm, corporation, organization, or other entity
12 holding a certificate of public convenience and necessity issued by the commission
13 authorizing the transportation and distribution of gas, including, without limitation, an
14 electing distribution company.

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

17 (12.1) 'Majority interest' means the ownership of 51 percent or more of:

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

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

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

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

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

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

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

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

1 the next full annual session of the General Assembly after the imposition of such directives.
 2 Any such directives shall be drawn as narrowly as possible to accomplish the purpose of
 3 protecting the public on an interim basis. ~~Such directives~~ A commission determination
 4 regarding the competitiveness of market conditions in accordance with this subsection and
 5 directives imposed as a result of such determination shall be immediately reviewable in the
 6 Superior Court of Fulton County in the same manner and subject to the same procedures
 7 as the review of any other contested case under the provisions of Code Section 50-13-19."

8 SECTION 4.

9 Said title is further amended in Code Section 46-4-160, relating to the commission's
 10 authority regarding marketers, marketers' billing and sales practices, access to the books and
 11 records of marketers, applicability of the 'Fair Business Practices Act of 1975,' and
 12 publication and broadcast of marketers' prices, by striking subsection (c) and inserting a new
 13 subsection (c) and a new subsection (k) to read as follows:

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

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

23 SECTION 5.

24 Said title is further amended by adding a new Code section to be designated Code Section
 25 46-4-160.3 to read as follows:

26 "46-4-160.3.

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

34 (b) The code of conduct rules adopted by the commission under this Code section shall
 35 include the requirements set forth in this subsection, as well as such other rules as the

1 commission shall determine are necessary to protect electric and gas customers and
2 promote competition:

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

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

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

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

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

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

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

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

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

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

34 (c) An electric membership corporation may make and maintain investments in, lend funds
35 to, and guarantee the debts and obligations of an EMC gas affiliate in total not to exceed
36 10 percent of such electric membership corporation's net utility plant.

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

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

13 SECTION 6.

14 Said title is further amended in Code Section 46-4-161, relating to the universal service fund,
 15 by striking subsection (b) and inserting in lieu thereof the following:

16 "(b)(1) The fund shall be administered by the commission under rules to be promulgated
 17 by the commission in accordance with the provisions of this Code section. Prior to the
 18 beginning of each fiscal year of the electing distribution company, the commission shall
 19 determine the amount of the fund appropriate for such fiscal year. In making such
 20 determination, the commission shall consider the following:

21 (A) The amount required to provide appropriate compensation to marketers with
 22 respect to uncollectible accounts arising from commodity sales to firm retail customers;

23 (B) The amount required to provide sufficient contributions in aid of construction to
 24 permit the electing distribution company to extend and expand its facilities from time
 25 to time as the commission deems to be in the public interest; and

26 (C) The amount required to assist low-income persons subject to price increases.

27 (2) Notwithstanding any other provisions of this Code section, the commission shall,
 28 pursuant to rules and regulations, administer and expend moneys in the fund primarily
 29 for the purpose provided in subparagraph (C) of paragraph (1) of this subsection for the
 30 24 months immediately succeeding ~~April 27, 2001~~ December 31, 2002."

31 SECTION 7.

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

1 "46-4-164.

2 (a) Nothing in this article shall be deemed to apply or impose requirements not otherwise
 3 existing on gas distribution companies owned by any county, municipality, other political
 4 subdivision, or governmental authority of this state; nor are the provisions of this article
 5 intended to increase or decrease the authority and jurisdiction of the commission with
 6 respect to the distribution, sale, or transportation of gas by any county, municipality, other
 7 political subdivision, or governmental authority of this state. Nothing in this article shall
 8 be construed to limit or otherwise affect the existing powers of municipal corporations or
 9 other political subdivisions of this state relating to the granting of franchises or the levying
 10 or imposition of taxes, fees, or charges.

11 (b) Notwithstanding any provision of law to the contrary, including, without limitation,
 12 Article 4 of Chapter 3 of this title, an EMC gas affiliate, as defined in Code Section
 13 46-4-152, of an electric membership corporation organized and operating pursuant to
 14 Article 4 of Chapter 3 of this title may apply for and be granted a certificate of authority
 15 to provide any service as authorized under this article on the same basis as any other person
 16 as defined in Code Section 46-4-152. The creation, capitalization, or control of (1) an EMC
 17 gas affiliate engaged in activities subject to the provisions of this article and the rules and
 18 regulations established by the commission or (2) other persons providing ancillary services
 19 shall be deemed to be among the purposes of an electric membership corporation as
 20 specified in paragraphs (2) and (3) of Code Section 46-3-200. Nothing in this article shall
 21 be deemed to increase or decrease the authority and jurisdiction of the commission with
 22 respect to such electric membership corporation except as to gas activities undertaken by
 23 the electric membership corporation or its EMC gas affiliate as authorized under this
 24 chapter.

25 (c) Notwithstanding any provision of law to the contrary, including, without limitation, the
 26 provisions of Chapter 3 of this title, an electric utility, as defined in Code Section 46-4-152,
 27 may be designated as provider of last resort in accordance with Code Section 46-4-166 and
 28 as a regulated provider of natural gas in accordance with Code Section 46-4-168 on the
 29 same basis as other entities eligible for such designation. Nothing in this article shall be
 30 deemed to increase or decrease the authority and jurisdiction of the commission with
 31 respect to such electric utility except as to gas activities undertaken by the electric utility
 32 or its gas affiliate as authorized by this chapter."

33 SECTION 8.

34 Said title is further amended by inserting new Code sections to be designated Code Sections
 35 46-4-166, 46-4-167, 46-4-168, and 46-4-169 to read as follows:

1 "46-4-166.

2 (a) The commission shall designate a provider of last resort to serve as a regulated
3 provider of natural gas to persons of low income or fixed income who are eligible for
4 public assistance in paying for natural gas in accordance with Code Section 46-1-5.
5 Certificated marketers, EMC gas affiliates, gas utilities, and electric utilities shall be
6 eligible for such designation. The commission shall regulate the rates and terms and
7 conditions for providing natural gas to such persons. The rates established by the
8 commission for the provider of last resort shall reflect a reasonable relationship with
9 relevant index prices for the period, as published in *Inside FERC's Gas Market Report*,
10 *Natural Gas Intelligence*, or similar reliable reports or as determined by trading on the New
11 York Merchantile Exchange. The provider of last resort shall be subject to the provisions
12 of Chapters 1 and 2 of this title and of this chapter to the extent that such provisions do not
13 conflict with this Code section or with Code Section 46-4-167 or 46-4-169; in the event of
14 a conflict, this Code section and Code Sections 46-4-167 and 46-4-169 shall govern the
15 provider of last resort.

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

24 46-4-167.

25 The commission may provide by rule or regulation for the termination of natural gas
26 service from the provider of last resort for any retail customer who has failed to pay within
27 30 days of the due date at least 50 percent of the amount due on a regular bill or an
28 extended payment plan.

29 46-4-168.

30 The commission shall designate a regulated provider of natural gas to serve any retail
31 consumer who desires to receive natural gas from a regulated provider. Certificated
32 marketers, EMC gas affiliates, gas utilities, and electric utilities shall be eligible for such
33 designation. The commission may designate the same person to act as provider of last
34 resort in accordance with Code Section 46-4-166 and regulated provider in accordance with
35 this Code section. The rates established by the commission for such regulated provider

1 shall provide a reasonable of return for the provider's investment and efforts. The
2 regulated provider designated in accordance with this Code section shall be subject to the
3 provisions of Chapters 1 and 2 of this title and of this chapter to the extent that such
4 provisions do not conflict with this Code section or with Code Section 46-4-169; in the
5 event of a conflict, this Code section and Code Section 46-4-169 shall govern the regulated
6 provider.

7 46-4-169.

8 The commission shall conduct an annual review of the performance of the provider of last
9 resort designated in accordance with Code Section 46-4-166 and the regulated provider
10 designated in accordance with Code Section 46-4-168. Upon completion of the annual
11 review, the commission may designate one or more different persons to serve as provider
12 of last resort and regulated rate provider."

13

SECTION 9.

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