

Senate Bill 390

By: Senators James of the 35th, Walker of the 22nd, Tate of the 38th and Harbison of the 15th

A BILL TO BE ENTITLED
AN ACT

1 To provide legislative findings; to amend Chapter 4 of Title 46 of the Official Code of
2 Georgia Annotated, relating to distribution, storage, and sale of gas, so as to repeal Article
3 5, the "Natural Gas Competition and Deregulation Act;" to provide for duties and authority
4 of the Public Service Commission with regard to transition; to provide for judicial review;
5 to provide remove provisions relating to alternative regulation and release of interstate
6 pipeline capacity; to change provisions relating to discovery in cases pending before the
7 Public Service Commission; to provide for effective dates and automatic repeal; to provide
8 for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1.

10 The General Assembly finds that the "Natural Gas Competition and Deregulation Act,"
11 enacted in 1997, has been unsuccessful in creating a competitive market for natural gas and
12 thus ensuring lower rates for natural gas, particularly for residential and small business
13 consumers. The General Assembly further finds that deregulation of natural gas was at least
14 partially responsible for the unusually high costs for residential and small business
15 consumers during the winter of 2000 to 2001, that marketers' prices for natural gas to
16 residential and small business consumers in the following months have continued to be high
17 despite declining costs at the wellhead, and that problems with implementation of
18 deregulation have included billing delays and inaccuracies and unacceptable customer
19 service. The General Assembly further finds that, with regard to fuel for heating the homes
20 and small businesses of Georgia, a regulated monopoly is less expensive, more efficient, and
21 more reliable.
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1 ranges of authorized rates of return, and the reduction or suspension of regulatory
2 requirements.

3 (b) A gas company may from time to time file an application with the commission to have
4 its rates, charges, classifications, and services regulated under an alternative form of
5 regulation. Within ten days of the filing, the gas company shall publish a notice generally
6 describing the application in a newspaper or newspapers with general circulation in its
7 service territory.

8 (c) After notice and hearing the commission may approve the plan, or approve it with
9 modifications, if the commission determines that the application is in the public interest
10 and will produce just and reasonable rates, after taking into consideration the extent to
11 which the application:

12 (1) Is designed to and is likely to produce lower prices for consumers of natural gas in
13 Georgia;

14 (2) Will provide incentives for the gas company to lower its costs and rates;

15 (3) Will provide incentives to improve the efficiency and productivity of the gas
16 company;

17 (4) Will foster the long-term provision of natural gas service in a manner that will
18 improve the quality and choices of service;

19 (5) Is consistent with maintenance and enhancement of safe, adequate, and reliable
20 service and will maintain or improve preexisting service quality and consumer protection
21 safeguards;

22 (6) Will not result in cross-subsidization among or between groups of gas company
23 customers;

24 (7) Will not result in cross-subsidization among or between the portion of the gas
25 company's business or operations subject to the alternative form of regulation and any
26 unregulated portion of the business or operations of the gas company or of any of its
27 affiliates;

28 (8) Will reduce regulatory delay and cost; and

29 (9) Will tend to enhance economic activity in the affected service territory.

30 (d) Performance based regulation adopted by the commission as an alternative form of
31 regulation shall provide for the following:

32 (1) Equal and symmetric opportunities to earn above and below the performance
33 standard;

34 (2) Performance incentives based upon conditions within the control of the management
35 of the gas company; and

36 (3) Adjustments from time to time for the net effect of changes in tax rates, other costs
37 imposed by law, and the cost of capital.

1 (e) Where an application for an alternative form of regulation has been filed by a gas
2 company and the commission determines that the proposal does not satisfy the
3 requirements of this Code section, it may either reject the proposal or issue an order
4 approving an alternative with such modifications as the commission deems necessary to
5 satisfy the requirements of this Code section. The commission shall determine and
6 prescribe in any such order establishing rates and charges the revenue requirements of the
7 gas company filing the application.

8 (f) An order adopting an alternative form of regulation may include:

9 (1) Terms and conditions for establishing new services, withdrawing services, price
10 changes to services, and services by contract to individual customers;

11 (2) Terms and conditions necessary to achieve the objectives contained in subsection (c)
12 of this Code section;

13 (3) General or specific authorization for changes in rates, charges, classifications, or
14 services such that the provisions of subsection (a) of Code Section 46-2-25 do not require
15 30 days' notice and commission approval before such change or changes may go into
16 effect; and

17 (4) Other rates, terms, and conditions that are consistent with the objectives and
18 requirements of subsection (c) of this Code section.

19 (g) Except as otherwise provided in this Code section, the provisions of this title relating
20 to the rates, charges, and terms of service of a gas company shall apply to rates, charges,
21 and terms of service established pursuant to this Code section.

22 (h) Any special or negotiated contract between a gas company and a retail customer
23 approved by the commission shall not be invalidated or modified by the provisions of this
24 Code section.

25 (i) (1) Neither the provisions of this Code section nor the provisions of Article 5 of
26 Chapter 4 of this title shall prohibit a gas company from releasing interstate pipeline
27 capacity available to it from time to time and not required to serve the requirements of
28 its retail customers and marketers and from making sales of gas with or without interstate
29 transportation capacity to municipal corporations, other local gas distribution companies,
30 or marketers and end users connected to an interstate pipeline company or connected to
31 another local distribution company; provided, however, that where net benefits to the firm
32 retail customers who are receiving commodity sales service from the gas company
33 accrue:

34 (A) Twenty percent of the revenues from the release of interstate pipeline capacity for
35 the purposes of transporting gas to end users in Georgia shall be allocated to the gas
36 company, and the remaining 80 percent of such revenues shall be credited to the costs
37 of gas sold by the gas company to firm retail customers;

1 (B) Ten percent of the revenues from the release of interstate pipeline capacity for the
 2 purpose of transporting gas to end users outside of Georgia shall be allocated to the gas
 3 company, and the remaining 90 percent of such revenues shall be credited to the costs
 4 of gas sold by the gas company to firm retail customers; and

5 (C) Fifty percent of the net margin from the sale of gas, with or without interstate
 6 capacity, to municipal corporations, other local gas distribution companies, or
 7 marketers and end users connected to an interstate pipeline company or connected to
 8 another local distribution company shall be allocated to the gas company, and the
 9 remaining 50 percent of such net margins shall be credited to the costs of gas sold by
 10 the gas company to firm retail customers; provided, however, that if as a result of such
 11 sale, the then existing natural gas requirements of retail customers in Georgia cannot
 12 be supplied physically, all of such net margin shall be credited to the costs of gas. The
 13 net margin shall be calculated by subtracting all variable costs associated with the
 14 transaction from the revenues generated by the transaction. The costs recovered by the
 15 gas company through such transactions shall be credited to the gas costs payable by
 16 retail customers of the gas company.

17 (2) Where a universal service fund has been created by the commission pursuant to Code
 18 Section 46-4-161 for a gas company which is an electing distribution company, as
 19 defined in paragraph (10) of Code Section 46-4-152, the shares that are to be credited to
 20 the costs of gas sold to firm retail customers under subparagraphs (A), (B), and (C) of
 21 paragraph (1) of this subsection shall be allocated to such fund, and the costs recovered
 22 through a transaction described in subparagraph (C) of this subsection shall be allocated
 23 to such company.

24 (3) Any gas company which engages in a transaction of a type described in paragraph (1)
 25 of this subsection, which results in the allocation to the gas company of a share of the
 26 revenues or net margin therefrom, shall make a report to the commission annually
 27 describing each such transaction and explaining the benefits resulting to firm retail
 28 customers from each such transaction. Such report shall be served on the consumer's
 29 utility counsel division of the Governor's Office of Consumer Affairs."

30 SECTION 4.

31 Said title is further amended in Code Section 46-2-57, relating to discovery in cases pending
 32 before the commission, by striking subsections (a) and (b) and inserting in lieu thereof the
 33 following:

34 "(a) In any case pending before it, the commission, in addition to its now existing
 35 authority to do so, is authorized to issue an order permitting its employees and agents to
 36 take depositions and otherwise obtain discovery of any matter, not privileged, which is

1 relevant to the subject matter involved in the investigation, proceeding, or petition before
 2 the commission, in the same manner prescribed in Chapter 11 of Title 9 for discovery in
 3 civil actions. ~~In any case involving an application of a gas company to establish just and
 4 reasonable rates pursuant to Code Section 46-2-23.1 or 46-4-154, intervenors who are
 5 granted party status pursuant to Code Section 46-2-59, as well as the gas company subject
 6 to the particular proceeding, shall have all discovery rights available under Chapter 11 of
 7 Title 9.~~

8 (b) The commission; and its agents and employees as directed by the commission; ~~and
 9 intervenors and gas companies which are granted discovery rights under subsection (a) of
 10 this Code section~~ are authorized to petition the Superior Court of Fulton County for all
 11 orders, injunctions, and subpoenas necessary to carry out the provisions of this Code
 12 section which would otherwise be authorized or necessary under Chapter 11 of Title 9; and
 13 the judges and clerks of the court are authorized to issue all such orders, injunctions, and
 14 subpoenas and to take all other actions necessary to carry out this Code section which
 15 would otherwise be authorized or necessary under Chapter 11 of Title 9."

16 **SECTION 5.**

17 Said title is further amended by striking in its entirety Article 5 of Chapter 4, the "Natural
 18 Gas Competition and Deregulation Act," consisting of Code Section 46-4-150, relating to a
 19 short title, Code Section 46-4-151, relating to legislative findings and intent, Code Section
 20 46-4-152, relating to definitions, Code Section 46-4-153, relating to certificates of authority,
 21 Code Section 46-4-154, relating to notice of election, unbundling, rates, and application
 22 requirements, Code Section 46-4-155, relating to regulation of unbundled services and
 23 capacity supply plans, Code Section 46-4-156, relating to customer assignment methodology,
 24 commissioner determination of adequate market conditions, notice to customers, and
 25 deposits, Code Section 46-4-157, relating to temporary directives, Code Section 46-4-158,
 26 relating to obligations of an electing distribution company and conditions, Code Section
 27 46-4-159, relating to standards of conduct for electing distribution companies and response
 28 to complaints, Code Section 46-4-160, relating to the commission's authority with regard to
 29 certificated marketers, conduct of marketers, access to books and records of marketers,
 30 consumer information, and penalties, Code Section 46-4-160.1, relating to dispute resolution
 31 and credit reporting, Code Section 46-4-160.2, relating to billing errors, Code Section 46-4-
 32 161, relating to the universal service fund, Code Section 46-4-162, relating to pilot programs,
 33 Code Section 46-4-163, relating to negotiated contracts, Code Section 46-4-164, relating to
 34 the construction of the article, and Code Section 46-4-165, relating to annual reports.

1 **PART III**

2 **SECTION 6.**

3 (a) Part 1 of this Act shall become effective upon its approval by the Governor or upon its
4 becoming law without such approval.

5 (b) Part 2 of this Act shall become effective on September 1, 2002.

6 **SECTION 7.**

7 Part 1 of this Act shall be automatically repealed February 1, 2003.

8 **SECTION 8.**

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