House Bill 1568

By: Representatives Smith of the 175th, Hudson of the 156th, Skipper of the 137th, Burkhalter of the 41st, Turnquest of the 73rd and others

A BILL TO BE ENTITLED

AN ACT

To enact the "Natural Gas Consumers´ Relief Act;" to amend Chapter 2 of Title 46 of the Official Code of Georgia Annotated, relating to the Public Service Commission, so as to allow 90 days for commission orders after a hearing regarding electric fuel cost recovery or adoption or amendment of natural gas capacity supply plans; to authorize the Public Service Commission to seek an injunction against the violation of any law administered by the commission or any rule, order, or regulation established by the commission; to amend Article 5 of Chapter 4 of Title 46 of the Official Code of Georgia Annotated, the "Natural Gas Competition and Deregulation Act," so as to revise extensively and comprehensively; to revise legislative findings and intent; to provide a bill of rights for consumers; to revise definitions; to provide for a continuing requirement of financial and technical ability for marketers; to provide that EMC gas affiliates are eligible to receive certificates of authority as marketers; to provide for terms and conditions governing the relationship between an electric membership corporation and its EMC gas affiliate; to provide for a reasonable method of rate design; to provide that a fee for distribution services shall not be required for certain billing periods; to change a provision relating to an electing distribution company´s revenues from interruptible service; to authorize a surcharge on customers receiving interruptible service; to require a hearing relating to direct assignment of interstate capacity assets; to clarify and change provisions relating to changing marketers; to change a provision relating to the amount of deposits charged to natural gas consumers; to provide for additional circumstances when the commission is authorized to issue temporary directives to protect retail customers; to require an electing distribution company to cooperate with certificated marketers and the regulated provider; to provide for service quality standards for electing distribution companies, commission review of performance with regard to such standards, and penalties; to provide for rules governing marketers´ terms of service, disclosure by marketers, the contents of consumer bills, and review for compliance with such rules; to provide that certain consumer protection rules shall be self-executing; to delete a provision prohibiting refusal to sell gas by marketers in certain circumstances; to prohibit estimated bills, unreasonable late fees, and retroactive rate increases; to provide for filing changes in

the terms and conditions for service with the commission and for the commission´s authority related to such changes; to provide for a system for voluntary contributions to assist low-income residential consumers; to create the Natural Gas Consumer Education Advisory Board and provide for the duty, members, officers, appointment of members, and expenses of members of such board; to provide for a private right of action and for the application of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975"; to change certain provisions relating to the universal service fund; to provide for certain powers and purposes of electric membership corporations relating to natural gas; to provide for selection of a regulated provider; to provide for the terms, conditions, rates, and customers for regulated gas services; to provide for reimbursements from the universal service fund in certain circumstances; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Natural Gas Consumers´ Relief Act."

SECTION 2.

Chapter 2 of Title 46 of the Official Code of Georgia Annotated, relating to the Public Service Commission, is amended in Code Section 46-2-26, relating to use of fuel-adjustment tariffs, procedures for rate changes based solely on changes in fuel costs, the commission´s power over rate changes pursuant to procedures or contracts approved by a federal regulatory agency, and disclosures required for utilities seeking rate changes, by striking subsection (e) and inserting in lieu thereof the following:

″(e) Following such hearing, the commission shall issue an order stating the base rates to be used by the utility during the next three consecutive calendar months, or until changed as provided in this Code section. Should the commission fail or refuse to issue such order by the ~~forty-fifth~~ ninetieth day after the utility´s filing, the base rates proposed by the utility shall thereupon be deemed adopted by operation of law.″

SECTION 3.

Said chapter is further amended by inserting a new Code section to be designated Code Section 46-2-95 to read as follows:

″46-2-95.

The commission may bring a civil action to enjoin the violation of any law administered by the commission or any rule, order, or regulation established by the commission. It shall

not be necessary to allege or prove that there is no adequate remedy at law to obtain an injunction under this Code section.″

SECTION 4.

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

″46-4-151.

(a) The General Assembly finds:

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

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

(3) All consumers are entitled to receive natural gas service on reasonable terms and at reasonable prices; and

(4) That protecting natural gas consumers in this new reliance on market based competition is the most important factor to consider in any decisions to be made in accordance with this article.

(b) It is the intent of this article to:

(1) Promote competition in the natural gas industry;

(2) Protect the consumer during and after the transition to a competitive natural gas market;

(3) Maintain and encourage safe and reliable natural gas service;

(4) Deregulate those components of the natural gas industry subject to actual competition;

(5) Continue to regulate those natural gas services subject to monopoly power;

(6) Promote an orderly and expeditious transition of the natural gas industry toward fully developed competition;

(7) Provide for rate-making methods which the General Assembly finds appropriate for the provision of natural gas services, including without limitation the use of straight fixed variable rate design, the recovery of certain stranded costs, and the use of alternative forms of rate regulation; ~~and~~

(8) Allow gas companies the opportunity to compete effectively in a competitive marketplace;

(9) Provide a bill of rights for consumers as follows:

(A) All consumers must have access to reliable, safe, and affordable gas service, including high quality customer service;

(B) All consumers must have the right to receive accurate, easily understood information about gas marketers, services, plans, terms and conditions, and rights and remedies. The information must be unbiased, accurate, and understandable in a written form, which allows for comparison of prices and terms of service;

(C) All consumers must receive the benefits of new services, technological advances, improved efficiency, and competitive prices;

(D) Standards for protecting consumers in matters such as deposit and credit requirements, service denials and terminations, and deferred payment provisions must be applied fairly to all consumers;

(E) All consumers must be protected from unfair, deceptive, fraudulent, and anticompetitive practices, including, but not limited to, practices such as cramming, slamming, and providing deceptive information regarding billing terms and conditions of service;

(F) All consumers shall receive accurate and timely bills from their marketers;

(G) All consumers are entitled to protection of their privacy and must be protected from improper use of their customer records or payment histories without their express consent;

(H) All consumers must be protected from price increases resulting from inequitable price shifting; and

(I) All consumers have the right to a fair and efficient process for resolving differences with marketers, including a system of internal review and an independent system of external review; and

(10) Provide that, in the event of any conflict between paragraph (9) of this subsection and any other paragraph of this subsection, the provisions of paragraph (9) shall override such other paragraph or paragraphs."

SECTION 5.

Said article is further amended by striking Code Section 46-4-152, relating to definitions, and inserting in lieu thereof the following:

"46-4-152.

As used in this article, the term:

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

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

(3) 'Ancillary service' means a service that is ancillary to the receipt or delivery of natural gas, including without limitation storage, balancing, peaking, and customer services.

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

(4.1) 'Consumer' means a retail customer of commodity sales service or of firm distribution service who uses such service or services primarily for personal, family, or household purposes.

(5) 'Control' includes without limitation the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a person. A voting interest of 10 percent or more creates a rebuttable presumption of control. A voting interest of 25 percent or more is deemed to constitute control. The term control includes the terms controlling, controlled by, and under control with.

(5.1) 'Cramming' means billing for goods or services not requested or authorized by a consumer.

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

(7) 'Customer service' means a function related to serving a retail customer including without limitation billing, meter reading, turn-on service, and turn-off service. Notwithstanding any provision of law to the contrary, any person may perform one or more customer services without first becoming certificated in accordance with Code Section 46-4-153.

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

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

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

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

(10.2) 'Electric utility' means any electric power company subject to the rate regulation of the commission in accordance with Code Sections 46-2-20 and 46-2-21.

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

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

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

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

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

(12.1) 'Low-income residential consumer' shall include any residential consumer of natural gas identified by the Department of Human Resources as eligible for public assistance in paying bills for natural gas service in accordance with Code Section 46-1-5.

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

(A) The partnership interests in a general or limited partnership;

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

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

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

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

(14.1) 'Regulated gas service' means gas service provided by a regulated provider of natural gas.

(14.2) 'Regulated provider of natural gas' means the entity selected by the commission to provide to consumers natural gas commodity service and ancillary services incident thereto in accordance with Code Section 46-4-166.

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

(15.1) 'Slamming' means changing or causing a change of a consumer´s service from one marketer or provider to another marketer or provider without request or authorization from the consumer.

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

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

SECTION 6.

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

″(d) Any certificate of authority issued by the commission is subject to revocation, suspension, or adjustment where the commission finds upon complaint and hearing that a marketer has failed repeatedly or has failed willfully to meet obligations to its retail customers and consumers which are imposed by this article, regulations issued pursuant to this article, or the marketer´s certificate of authority; has engaged in unfair competition; or has abused its market position.″

″(f) All gas marketers are required to continue to possess financial and technical capability to render service and offer service pursuant to contractual terms and conditions the commission from time to time finds economically viable for delivery groups served. This is a continuing obligation and may be reviewed by the commission at any time.″

SECTION 7.

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

″46-4-153.1.

(a) Notwithstanding any other provision of this article or Article 4 of Chapter 3 of this title, the commission shall have authority to issue certificates of authority to an EMC gas affiliate but shall not have authority to issue certificates of authority to an electric membership corporation. The commission´s order granting a certificate of authority to an EMC gas affiliate shall include terms and conditions to govern the relationship between the electric membership corporation and its EMC gas affiliate. The terms and conditions shall be designed to prevent cross-subsidization between the provision of electricity and the provision of natural gas services, to encourage and promote fair competition in the overall retail natural gas market, and to protect the privacy of both electric and natural gas consumers.

(b) The order by the commission pursuant to 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 natural gas consumers 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 gas affiliate, the terms and conditions ordered by the commission shall provide that each electric membership corporation having a 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 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 terms and conditions ordered by the commission. Such manual shall:

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

(ii) Provide that any loans from the electric membership corporation to its gas affiliate shall be at market rates, shall not reflect rates which may be obtained through the use of any tax exempt financing, and may not be tied directly to any loans from the federal or state government;

(iii) Require the electric membership corporation and its gas affiliate to maintain separate books of accounts and records which shall, subject to the commission´s rules for treatment of trade secrets, be subject to production and inspection by the commission for the sole purpose of confirming compliance with this article, the cost allocation manual, and the terms and conditions of the gas affiliate´s certificate; and

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

(C) Not charge any costs of the gas affiliate to the electricity customers of the electric membership corporation; and

(D) Require that any customer service that an electric membership corporation provides to its gas affiliate must also be offered to all marketers at the same rate and on the same terms and conditions as provided to the gas affiliate. Any such services provided to the gas affiliate or marketers must be on a strictly confidential basis, such that the electric membership corporation does not share information regarding one marketer with any other marketer, including an EMC gas affiliate; and

(2) To protect customer privacy and prevent the misuse of customer information, the terms and conditions ordered by the commission shall provide that no electric membership corporation shall release any proprietary customer information to its gas affiliate without obtaining prior verifiable authorization from the customer, as determined in accordance with rules established by the commission.

(c) The terms and conditions shall accommodate the organizational structures of electric membership corporations.

(d) To assure separate but coordinating governance of an electric membership corporation and its gas affiliate, the terms and conditions shall prohibit more than one-half of the persons serving as members of the board of directors of a gas affiliate from at the same time serving on the board of directors of an electric membership corporation.

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

SECTION 8.

Said article is further amended by striking Code Section 46-4-154, relating to notice of election, unbundling, rates, and application requirements, and inserting in lieu thereof the following:

″46-4-154.

(a) A gas company may elect to become subject to the provisions of this article by filing a notice of election with the commission and by filing an application to establish just and reasonable rates, including separate rates for unbundled services. Pursuant to such application, the commission shall:

(1) Maintain rates for interruptible distribution service at the levels set forth in the rate schedules approved by the commission and in effect on the day the gas company files a notice of election as provided for in this Code section;

(2) After notice and hearing, establish ~~Establish~~ rates for firm distribution service using ~~the straight fixed variable~~ a reasonable method of rate design, ~~subject to the provisions of subsection (b) of this Code section;~~ which may, at the commission´s discretion, include a straight fixed variable method of rate design; provided, however, that a consumer shall not be required to pay a fee for distribution service during any billing period when the consumer´s meter is turned off;

(3) Establish separate rates and charges, which may be based on market value, for each type of ancillary service which is classified separately;

(4) Provide for the recovery in rates of those costs which the commission determines are prudently incurred and used and useful in providing utility service; and

(5) Provide for recovery of costs found by the commission to be stranded and necessary to provide a reasonable return, provided that only prudently incurred stranded costs that cannot be mitigated may be recovered.

~~(b) If the commission determines that inefficiencies in the rate design or other causes in existence immediately preceding the implementation of the straight fixed variable rate design will result in a material fluctuation of rates for firm distribution service to a group of retail customers upon implementation of straight fixed variable rate design, the commission may make such adjustments to the rates for firm distribution service as it deems appropriate to phase in the straight fixed variable rate design for firm distribution service:~~

~~(1) Over a 12 month period from the date the rates filed by the electing distribution company would otherwise be effective if such material fluctuation will be less than 10 percent of the total gas charges for a group of retail customers; or~~

~~(2) Over a 24 month period from the date the rates filed by the electing distribution company would otherwise be effective if such material fluctuation will be equal to or greater than 10 percent of the total gas charges for a group of retail customers.~~

~~However, in no event shall any such adjustment be made if the adjustment results in cross-subsidization between retail customers receiving firm distribution service and retail customers receiving interruptible distribution service or if the adjustment reduces the~~

~~revenues to the electing distribution company for firm distribution service below those that would be recovered by the electing distribution company under the straight fixed variable rate without such adjustment.~~

~~(c)~~(b) In any proceeding before the commission to establish rates as provided in subsection (a) of this Code section, the commission shall prescribe rates for the services and cost recovery purposes specified in paragraphs (2), (3), (4), and (5) of subsection (a) of this Code section at levels which are designed to recover the costs of service of the electing distribution company as established by the commission in such proceeding. In such proceeding, the commission shall also prescribe a mechanism by which ~~90~~ 98 percent of the revenues to the electing distribution company from rates for interruptible distribution service shall be credited to the universal service fund established for that electing distribution company pursuant to Code Section 46-4-161. ~~Each electing distribution company is authorized to retain for the benefit of its shareholders or owners 10 percent of the revenues the electing distribution company received from rates for interruptible service. Each electing distribution company which retains 10 percent of such revenues shall make a report to the commission annually describing the benefits resulting to firm retail customers from interruptible distribution service revenues.~~

~~(d)~~(c) In addition to any other applicable filing requirements, any such application by a gas company shall include the following:

(1) An identification of each component of natural gas service, including but not limited to commodity sales service, distribution service, and ancillary services, which are to be unbundled and offered under separate rates, together with the total costs to provide each such service by the electing distribution company including a return on investment;

(2) Provisions for offering each unbundled service on an equal access, nondiscriminatory basis;

(3) A description of the method by which the electing distribution company proposes to allocate its intrastate capacity for firm distribution service to a marketer based upon the peak requirements of the firm retail customers served by the marketer;

(4) A description of the method by which the electing distribution company proposes to allocate its rights to interstate pipeline and underground storage to a marketer based upon the peak requirements of the firm retail customers served by the marketer; and

(5) A plan for establishing and operating an electronic bulletin board by which the electing distribution company will provide marketers with equal and timely access to information relevant to the availability of firm distribution service.

~~(e)~~(d) Notwithstanding any other provision of this title, the commission shall hold a hearing regarding an application filed pursuant to this Code section and may suspend the

operation of the proposed schedules and defer the use of the proposed rates, charges, classifications, or services for a period of not longer than six months.

(e) The commission shall establish a surcharge on all customers receiving interruptible service over the electing distribution company´s distribution system sufficient to ensure that such customers will pay an equitable share of the cost of the distribution system over which such customers receive service. The commission is authorized to direct the electing distribution company or the marketers to collect such surcharge directly from the customers. Such surcharge shall be paid promptly upon receipt into the universal service fund until the next time the commission determines the rates of the electing distribution company; thereafter, the surcharge shall go toward meeting the electing distribution company´s revenue requirements; provided, however, that, at the discretion of the commission, a portion of such surcharge may be directed to the universal service fund.″

SECTION 9.

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

″(e)(1) As used in this subsection, the term 'interstate capacity assets' means interstate transportation and out-of-state gas storage capacity.

(2) If, pursuant to the provisions of this article, the rates for commodity sales service of an electing distribution company within a delivery group or groups become no longer subject to the approval of the commission nor to the provisions of Code Section 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible for acquiring and contracting for the interstate capacity assets necessary for gas to be made available on its system, whether directly or by assignment to marketers, for firm distribution service to retail customers within such delivery group or groups unless determined otherwise by the commission in accordance with this subsection.

(3) At least every third year following the date when the rates for commodity sales service within a delivery group or groups become no longer subject to commission approval nor to the provisions of Code Section 46-2-26.5, the electing distribution company shall file, on or before August 1 of such year, a capacity supply plan which designates the array of available interstate capacity assets selected by the electing distribution company for the purpose of making gas available on its system for firm distribution service to retail customers in such delivery group or groups.

(4) Not less than ten days after any such filing by an electing distribution company, the commission shall conduct a public hearing on the filing. The electing distribution company´s testimony shall be under oath and shall, with any corrections thereto,

constitute the electing distribution company´s affirmative case. At any hearing conducted pursuant to this subsection, the burden of proof to show that the proposed capacity supply plan is appropriate shall be upon the electing distribution company.

(5) Following such a hearing, the commission shall issue an order approving the capacity supply plan filed by the electing distribution company or adopting a capacity supply plan for the electing distribution company that the commission deems appropriate. Should the commission fail or refuse to issue an order by the ~~forty-fifth~~ ninetieth day after the electing distribution company´s filing which either approves the capacity supply plan filed by the electing distribution company or adopts a different capacity supply plan for the electing distribution company, the capacity supply plan proposed by the electing distribution company shall thereupon be deemed approved by operation of law.

(6) Any capacity supply plan approved or adopted by the commission shall:

(A) Specify the range of the requirements to be supplied by interstate capacity assets;

(B) Describe the array of interstate capacity assets selected by the electing distribution company to meet such requirements;

(C) Describe the criteria of the electing distribution company for entering into contracts under such array of interstate capacity assets from time to time to meet such requirements; provided, however, that a capacity supply plan approved or adopted by the commission shall not prescribe the individual contracts to be executed by the electing distribution company in order to implement such plan; and

(D) Specify the portion of the interstate capacity assets which must be retained and utilized by the electing distribution company in order to manage and operate its system.

(7) When interstate capacity assets that are contained in a capacity supply plan approved or adopted by the commission are allocated by the electing distribution company to a marketer pursuant to the provisions of this article, all of the costs of the interstate capacity assets thus allocated shall be borne by such marketer.

(8) The provisions of law relating to parties, intervention, and discovery in proceedings before the commission shall apply with respect to proceedings under this subsection.

(9) All commission orders issued pursuant to this subsection shall contain the commission´s findings of fact and conclusions of law upon which the commission´s action is based. Any such order shall be deemed a final order subject to judicial review under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(10) Prior to the approval or adoption of a capacity supply plan pursuant to this subsection, the interstate capacity assets of the electing distribution company in the most current gas supply plan of such company approved or adopted by the commission pursuant to the provisions of Code Section 46-2-26.5 shall be treated as a capacity supply plan that is approved or adopted by the commission for purposes of this subsection.

(11) After a capacity supply plan has become effective pursuant to provisions of this subsection as a result of a proceeding before the commission, the commission shall retain jurisdiction of the proceeding for the purposes set forth in this subsection. Upon application of the affected electing distribution company or the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs or upon its own initiative, the commission may, after affording due notice and opportunity for hearing to the affected electing distribution company and the intervenors in the proceeding, amend the capacity supply plan of the affected electing distribution company. Any such amendment shall not adversely affect rights under any contract entered into pursuant to such plan without the consent of the parties to such contracts. If an amendment proceeding is initiated by the affected electing distribution company and the commission fails or refuses to issue an order by the ~~forty-fifth~~ ninetieth day after the electing distribution company´s filing, the amended capacity supply plan proposed by the electing distribution company shall thereupon be deemed approved by operation of law.

(12) After an electing distribution company has no obligation to provide commodity sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and upon the petition of any interested person and after notice and opportunity for hearing afforded to the electing distribution company, all parties to the most current proceeding establishing a capacity supply plan for such electing distribution company, the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs, and all marketers who have been issued a certificate of authority pursuant to Code Section 46-4-153, the commission may issue an order eliminating the responsibility of the electing distribution company for acquiring and contracting for interstate capacity assets necessary for gas to be made available on its system as well as the obligation of such electing distribution company to file any further capacity supply plans with the commission pursuant to the provisions of this subsection, if the commission determines that:

(A) Marketers can and will secure adequate and reliable interstate capacity assets necessary to make gas available on the system of the electing distribution company for service to firm retail customers;

(B) Adequate, reliable, and economical interstate capacity assets will not be diverted from use for service to retail customers in Georgia;

(C) There is a competitive, highly flexible, and reasonably accessible market for interstate capacity assets for service to retail customers in Georgia;

(D) Elimination of such responsibility on the part of the electing distribution company would not adversely affect competition for natural gas service to retail customers in Georgia; and

(E) Elimination of such responsibility on the part of the electing distribution company is otherwise in the public interest.

If the commission eliminates the responsibility of an electing distribution company for acquiring and contracting for interstate capacity assets and filing further capacity supply plans in accordance with this subsection, the commission shall annually review the assignment of interstate capacity assets.

(13) Notwithstanding any other provisions in this Code section to the contrary, no later than July 1, 2003, the commission shall, after notice afforded to the electing distribution company, the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs, and all marketers who have been issued a certificate of authority in accordance with Code Section 46-4-153, hold a hearing regarding a plan for direct assignment of interstate assets. After such hearing, the commission may adopt a plan for direct assignment of interstate capacity assets held by the electing distribution company, except for those interstate capacity assets reasonably required for balancing. If adopted, the plan shall provide for interstate capacity assets to be assigned to certificated marketers who desire assignment and who are qualified technically and financially to manage interstate capacity assets. Marketers who accept assignment of interstate capacity assets shall be required by the commission to use such assets primarily to serve retail customers in Georgia and shall be permitted to use such assets outside Georgia so long as the reliability of the system is not compromised. Thereafter, the commission shall annually review the assignment of interstate capacity assets.″

SECTION 10.

Said article is further amended in Code Section 46-4-156, relating to customer assignment; determination of adequate market conditions; notice to customers; petition proceedings; changes in marketers; and deposits, by striking paragraph (3) of subsection (b) and subsections (g) and (h) and inserting in lieu thereof the following:

″(3) Subject to subsection (d) of this Code section and provided that all initial assignments of rights to intrastate capacity for firm distribution service, interstate pipeline, and underground storage by an electing distribution company to marketers, as necessary for marketers to initiate service to all firm retail customers with which they have contracted or to which they have been assigned as provided for in this Code section, whether by allocation pursuant to a tariff approved under paragraph (3) or (4) of subsection ~~(d)~~ (c) of Code Section 46-4-154 or by contract, are effective pursuant to the terms of such tariff or contract and, provided, further, that all initial assignments of rights under firm wellhead gas supply contracts by an electing distribution company to marketers, as necessary for marketers to initiate service to all firm retail customers with

which they have contracted or to which they have been assigned as provided for in this Code section, by allocation pursuant to a tariff approved under Code Section 46-4-154 are effective pursuant to the terms of such tariff, an electing distribution company has no obligation to provide commodity sales service to retail customers.″

″(g) Notwithstanding any other provision of this article, a ~~retail customer~~ consumer shall be authorized to change marketers at least once a year without incurring any service charge relating to such change to an alternative marketer. No marketer shall charge any consumer a service charge relating to a change to an alternative marketer if such consumer has not changed marketers within the previous 12 months. Except as otherwise provided in a legally binding contract between the marketer and the consumer, no marketer shall require a notice period from a consumer before changing such consumer´s service to an alternative marketer. The commission shall investigate methods to expedite the electing distribution company´s processes for switching consumers to the consumers´ preferred marketer and may enter appropriate orders to expedite switching consumers.

(h) A marketer may require a deposit, not to exceed $150.00, from a ~~retail customer~~ consumer prior to providing gas distribution service to such ~~customer; provided, however, that such deposit cannot exceed 100 percent of the customer´s average monthly bill based on past customer usage and current marketer prices~~ consumer. A marketer is not authorized to require an increase in the deposit of a consumer if such consumer has paid all bills from the marketer in a timely manner for a period of three months. A marketer shall refund to any consumer who is not currently delinquent on payments to the marketer any deposit amount exceeding $150.00 within 30 days following the effective date of this subsection. In any case where a marketer has required a deposit from a ~~retail customer~~ consumer and such ~~customer~~ consumer has paid all bills from the marketer in a timely manner for a period of six months, the marketer shall be required to refund the deposit to the ~~customer~~ consumer within 60 days. In any event, a deposit shall be refunded to a ~~retail customer~~ consumer within 60 days of the date that ~~a retail customer~~ such consumer changes marketers or discontinues service, provided ~~the retail customer~~ that such consumer has satisfied all of his or her outstanding financial obligations to the marketer.″

SECTION 11.

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

″46-4-157.

(a) If, in an expedited hearing pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act':

(1) The commission determines for a specific delivery group, as to which the commission has issued an order pursuant to subsection (b) of Code Section 46-4-156, that the prices for natural gas paid by firm retail customers in such delivery group are not constrained by market forces and are significantly higher than such prices would be if they were constrained by market forces; or

(2) The commission determines for a specific delivery group, as to which the commission has not issued an order pursuant to subsection (b) of Code Section 46-4-156, that the prices charged by an electing distribution company to ~~residential customers~~ consumers for commodity sales services, which prices have not been approved by the commission pursuant to Code Section 46-2-26.5, are generally not constrained by market forces and are significantly higher than such prices would be if they were constrained by market forces,

then the commission, on an emergency basis, may by order temporarily impose such directives on gas companies subject to its jurisdiction as are required to protect the interests of firm retail customers in such delivery group including but not limited to price regulations and the imposition upon the electing distribution company of the obligation to serve retail customers in such delivery group under the same or similar conditions to those under which such customers were served prior to customer assignment in such delivery group. In no event shall such emergency directives extend beyond the first day of July immediately following the next full annual session of the General Assembly after the imposition of such directives. In its order the commission shall provide for recovery of all costs reasonably incurred by the electing distribution company in complying with the directives. Any such directives shall be drawn as narrowly as possible to accomplish the purpose of protecting the public on an interim basis. No such directive shall impose any condition upon the electing distribution company which unreasonably burdens the company. Such directives shall be immediately reviewable in the Superior Court of Fulton County in the same manner and subject to the same procedures as the review of any other contested case under the provisions of Code Section 50-13-19. ~~The provisions of this Code section shall not apply to a delivery group for which customer assignment occurred more than four years prior to the date of notice of the expedited hearing.~~

~~(b) If, in an expedited hearing pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' the commission determines that market conditions are no longer competitive, then the commission, on an emergency basis, may by order temporarily impose such directives on marketers as are required to protect the interests of retail customers in the state, including, but not limited to, price regulations on the marketers. For purposes of this subsection, market conditions shall be considered competitive as long as there are at least three marketers soliciting and providing~~

~~distribution services to residential and small business customers in this state; provided, however, that, in any case where there are three or less marketers soliciting and providing distribution services to residential and small business customers in this state, market conditions shall not be considered competitive if the commission upon clear and convincing evidence determines that as a result of collusion among such marketers, prices for natural gas paid by retail customers are not being adequately constrained by market forces and are significantly higher than such prices would be if they were constrained by market forces. In no event shall such emergency directives extend beyond the first day of July immediately following the next full annual session of the General Assembly after the imposition of such directives. Any such directives shall be drawn as narrowly as possible to accomplish the purpose of protecting the public on an interim basis. Such directives shall be immediately reviewable in the Superior Court of Fulton County in the same manner and subject to the same procedures as the review of any other contested case under the provisions of Code Section 50-13-19.~~

(b) If, in an expedited hearing pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' the commission makes any of the determinations described in subsection (c) or (d) of this Code section, the commission may, on a temporary basis, by order impose on marketers such directives as are required to protect the interest of retail customers in a specific delivery group, including but not limited to price regulations. In no event shall such emergency directives extend beyond the first day of July in the year immediately following imposition of such directives. Any such directives shall be drawn as narrowly as possible to accomplish the purpose of protecting the public on an interim basis. Such directives shall be immediately reviewable in the Superior Court of Fulton County in the same manner and subject to the same procedures as the review of any other contested case under the provisions of Code Section 50-13-19.

(c) Upon determination by the commission that market conditions are no longer competitive, the commission may impose directives as described in subsection (b) of this Code section. For purposes of this subsection, market conditions shall not be considered competitive if more than 90 percent of retail customers in a specific delivery group are served by three or fewer marketers.

(d) Upon determination by the commission that prices paid by retail customers for natural gas in a specific delivery group are not constrained by market forces and are significantly higher than such prices would be if they were constrained by market forces, the commission may impose directives as described in subsection (b) of this Code section. For purposes of this subsection, prices for natural gas shall be considered constrained by market forces whenever marketers who serve in the aggregate 50 percent of the retail market in the applicable delivery group are charging, on average, retail prices that are

within 30¢ per therm of the index prices for natural gas as published in *Inside FERC´s Gas Market Report* or as determined by trading on the New York Mercantile Exchange, plus all applicable interstate pipeline and storage charges including all demand and commodity costs, as determined by the commission.″

SECTION 12.

Said article is further amended in Code Section 46-4-158, relating to the obligations of an electing distribution company, by striking subsection (a) and inserting in lieu thereof the following:

″(a) An electing distribution company which provides firm distribution service under this article must:

(1) Offer an allocation of such distribution service to marketers separately from any commodity sales service or other service;

(2) Provide such allocation of such distribution service to marketers without undue discrimination or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be distributed, customer classification, or other undue discrimination or preference of any kind; ~~and~~

(3) Provide all marketers with equal and timely access to information relevant to the availability of such service, including without limitation the availability of capacity at delivery points, through the use of an electronic bulletin board; and

(4) Cooperate with each certificated marketer and each regulated provider of natural gas to achieve the intentions of this article set out in subsection (b) of Code Section 46-4-151.″

SECTION 13.

Said article is further amended by inserting new Code sections to be designated Code Sections 46-4-158.1 through 46-4-158.4 to read as follows:

″46-4-158.1.

(a) Not later than September 1, 2002, the commission shall promulgate rules and regulations to establish service quality standards for each electing distribution company, including, but not limited to, minimal performance standards for posting data on the electronic bulletin board; meter reading; meter turn-ons and turn-offs; forecasting; call center response times; lost and unaccounted for natural gas; acquiring and managing interstate capacity assets, including retained storage; and any other service quality standards deemed necessary by the commission.

(b) Each electing distribution company shall file reports with the commission showing its performance with regard to service quality standards established in accordance with this Code section. Such reports shall be filed at least quarterly, or on a more frequent basis if ordered by the commission.

(c) Failure to comply with service quality standards established in accordance with this Code section shall subject an electing distribution company to fines as determined by the commission. Fines assessed under this subsection shall be payable to the universal service fund.

(d) At least annually the commission shall conduct a proceeding to review the electing distribution company´s compliance with the service quality standards.

(e) If the commission determines that an electing distribution company has failed to satisfactorily meet the performance standards for system forecasting, including setting the daily supply requirement and the marketer firm obligation, or has otherwise demonstrated an inability to perform such function properly, then the commission may enter an order relieving the electing distribution company of its system forecasting responsibilities and may establish a competitive request for proposal process to select an independent entity with the technical and financial ability to perform the role of system forecasting, including setting the daily supply requirement and the marketer firm obligation. The agreement for system forecasting shall include standards for evaluating the performance of the forecaster and for awarding incentives for superior performance and imposing disincentives for unsatisfactory performance. The commission shall establish an appropriate mechanism to recover the cost of performing such functions.

(f) If the commission determines that the public interest would be served thereby, the commission may enter an order establishing a competitive request for proposal process to select an independent auditor or auditors for the purpose of examining:

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

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

(g) Any independent auditor selected in accordance with subsection (f) of this Code section shall prepare a semiannual audit report to the commission. Unless a written objection clearly specifying one or more errors or inaccuracies in the audit report is filed within ten days after the audit report is filed with the commission, the audit report shall be accepted by the commission. If an objection is filed, the commission shall conduct an expedited hearing within ten days after the objection is filed to determine whether to accept the audit report. A final decision shall be issued five days after such a hearing. An audit report, along with its status as accepted or not accepted by the commission, shall be

admissible in any litigation relating to transactions described or evaluated in the audit report.

(h) Sale of gas held in storage for a marketer by an electing distribution company shall be prohibited.

46-4-158.2.

The commission shall by September 1, 2002, adopt rules governing a marketer´s terms of service for natural gas consumers. Such rules shall provide, without limitation, that:

(1) Each retail natural gas marketer shall establish policies and procedures for handling billing disputes and requests for payment arrangements, which must be approved by the commission;

(2) A marketer´s advertised prices shall reflect the prices in disclosure statements and billed prices and shall be presented in the standard pricing unit of the electing distribution company;

(3) The consumer shall have a right to contact the commission and the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs if he or she is not satisfied with the response of the marketer;

(4) Marketers shall provide all consumers with a three-day right of rescission following the receipt of the disclosure statement, which shall be provided to consumers at times specified in rules and regulations of the commission. Consumers may cancel an agreement in writing or electronically by contacting the marketer;

(5) Whenever a marketer offers a fixed term agreement and the expiration date of such agreement is approaching, or whenever a marketer proposes to change its terms of service under any type of agreement, the marketer shall provide written notification to the natural gas consumer, clearly explaining the consumer´s options at that point, including, but not limited to, the option to seek another marketer;

(6) A marketer shall not charge cancellation fees to a low-income residential consumer seeking service from the regulated provider;

(7) Gas service to a consumer shall be disconnected only for failure to pay for service from the consumer´s current marketer. A marketer may not request disconnection of service for nonpayment of a bill which was not sent to the consumer in a timely manner. Every marketer shall be required to offer at least one reasonable payment arrangement to a consumer prior to requesting that such consumer be disconnected for failure to pay. Disconnection of service to a consumer is authorized no earlier than 15 days after a notice that service will be disconnected;

(8) Marketers shall be prohibited from sending estimated bills to natural gas consumers; and

(9) No marketer shall be authorized to prevent a consumer from obtaining distribution and commodity sales service from another marketer or provider.

46-4-158.3.

The commission shall, by September 1, 2002, adopt rules and regulations requiring marketers which provide firm distribution service under this article to provide adequate and accurate consumer information to enable consumers to make informed choices regarding the purchase of natural gas services. Such rules shall provide, without limitation, that:

(1) A disclosure statement shall be provided to consumers in an understandable format that enables such consumers to compare prices and services on a uniform basis. Rules adopted by the commission shall provide when disclosure statements shall be provided to consumers. Such disclosure statements shall include, but shall not be limited to, the following:

(A) For fixed rate charges for natural gas service, a clear disclosure of the components of the fixed rate, the actual prices charged by the marketer and by the electing distribution company, presented in a single standard pricing unit which includes any charges imposed by the marketer, so that the consumer can compare rates among marketers. This disclosure shall not include state and local sales taxes. The standard pricing disclosure unit must include all recurring monthly charges;

(B) For variable rate charges for natural gas service, a clear and understandable explanation of the factors that will cause the price to vary and how often the price can change, the starting price, and the ceiling price, if any, so that the consumer can compare rates among marketers. This disclosure shall not include state and local sales taxes. The standard pricing disclosure unit must include all recurring monthly charges;

(C) A statement that the standard unit price does not include state and local taxes or distribution charges imposed by the electing distribution company;

(D) The length of the agreement, including the starting date and expiration date, if applicable;

(E) The billing interval and any late payment fees;

(F) The marketer´s credit, deposit, and collection policies and procedures;

(G) How to contact the marketer for information or complaints;

(H) A statement of the natural gas consumer´s right to contact the commission and the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs if he or she is not satisfied with the response of the marketer, including the local and toll-free telephone numbers of these agencies;

(I) The division name and telephone number for information regarding heating assistance administered by the Department of Human Resources;

(J) The following statement:

'A consumer shall have a three-day right of rescission following the receipt of this disclosure at the time of initiating service or when informed of a change in terms or conditions. You, the consumer, may cancel in writing or electronically by contacting the marketer.';

(K) The following statement:

'If you have a fixed term agreement with us and it is approaching the expiration date, or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us prior to the date of expiration of or change to the agreement. We will explain your options to you in this advance notification.';

(L) A statement setting forth the requirements of paragraphs (6) through (9) of Code Section 46-4-158.2; and

(M) A statement that deposits shall not exceed $150.00; and

(2) Natural gas consumers´ bills shall be accurate and understandable and shall contain sufficient information for a consumer to compute and compare the total cost of competitive retail natural gas services. Such bills shall include, but not be limited to, the following:

(A) The consumer´s name, billing address, service address, and natural gas company account number;

(B) The dates of service covered by the bill, an itemization of each type of competitive natural gas service covered by the bill, any related billing components, the charge for each type of natural gas service, and any other information the consumer would need to recalculate the bill for accuracy;

(C) The applicable billing determinants, including beginning meter reading, ending meter reading, multipliers, and any other consumption adjustments;

(D) The amount billed for the current period, any unpaid amounts due from previous periods, any payments or credits applied to the consumer´s account during the current period, any late payment charges or gross and net charges, if applicable, and the total amount due and payable;

(E) The due date for payment to keep the account current;

(F) The current balance of the account, if the natural gas consumer is billed according to a budget plan;

(G) Options and instructions on how the natural gas consumer can make a payment;

(H) A toll-free or local telephone number and address for consumer billing questions or complaints for any retail natural gas company whose charges appear on the bill;

(I) The applicable electing distribution company´s 24 hour local or toll-free telephone number for reporting service emergencies; and

(J) An explanation of any codes and abbreviations used.

46-4-158.4.

The commission shall review marketers´ compliance with rules promulgated in accordance with Code Sections 46-4-158.2 and 46-4-158.3.″

SECTION 14.

Said article is further amended by striking Code Section 46-4-160, relating to marketers and provision of information to the public regarding prices of marketers, and inserting in lieu thereof the following:

″46-4-160.

(a) With respect to a marketer certificated pursuant to Code Section 46-4-153, the commission shall have authority to:

(1) Adopt reasonable rules and regulations governing the certification of a marketer;

(2) Grant, modify, impose conditions upon, or revoke a certificate;

(3) Adopt reasonable rules governing service quality. In promulgating consumer protection rules under this article, the commission shall, to the extent practicable, provide for rules with a self-executing mechanism to resolve such complaints in a timely manner. Such consumer protection rules shall encourage marketers to resolve complaints without recourse to the commission and shall expedite the handling of those complaints that do require action by the commission by providing, where practicable, set remedies and penalties for violations of the rules;

(4) Resolve complaints against a marketer regarding that marketer´s service;

(5) Adopt reasonable rules and regulations relating to billing practices of marketers and information required on customers´ bills. The commission shall require at a minimum that bills specify the gas consumption amount, price per therm, distribution charges, and any service charges. The commission shall prescribe performance standards for marketer billing relating to accuracy and timeliness of customer bills;

(6) Adopt reasonable rules and regulations relating to minimum resources which marketers are required to have in this state for customer service purposes. The rules and regulations shall require a marketer to have and maintain the ability to process cash payments from customers in this state. The rules and regulations shall provide procedures relating to the handling and disposition of customer complaints; and

(7) Adopt reasonable rules and regulations requiring marketers to provide notification to retail customers of or include with customer bills information relating to where customers may obtain pricing information relative to gas marketers.

(b) Prior to the determination by the commission pursuant to Code Section 46-4-156 that adequate market conditions exist within a delivery group, each marketer must separately state on its bills to retail customers within the delivery group the charges for firm distribution service and for commodity sales.

(c) ~~A marketer shall not refuse to sell gas to a potential firm retail customer within the territory covered by the marketer´s certificate of authority if the sale can be made by the marketer pursuant to the rules for service authorized by the marketer´s certificate of authority and upon terms that will provide the marketer with just and adequate compensation. The~~ Except as otherwise provided by this article, the price at which a marketer sells gas shall not be ~~fixed~~ regulated by the commission.

(d) The commission and the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs shall have access to the books and records of marketers as may be necessary to ensure compliance with the provisions of this article and with the commission´s rules and regulations promulgated under this article.

(e) Except as otherwise provided in this article, certification of a person as a marketer by the commission pursuant to Code Section 46-4-153 does not subject the person to the jurisdiction of the commission under this title, including without limitation the provisions of Article 2 of Chapter 2 of this title.

(f) The provisions of Article 3 of Chapter 2 of this title shall apply to an investigation or hearing regarding a marketer. The provisions of Articles 4 and 5 of Chapter 2 of this title shall apply to a marketer.

~~(g) The provisions of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' shall apply to a marketer.~~

~~(h)~~(g) The commission, subject to receiving state funds for such purpose, is required to have published at least quarterly in newspapers throughout the state a summary of the price per therm and any other amounts charged to retail customers by each marketer operating in this state and any additional information which the commission deems appropriate to assist customers in making decisions regarding choice of a marketer. In addition, the commission shall make such information available to Georgia Public Telecommunications (GPTV) under the jurisdiction of the Georgia Public Telecommunications Commission which will provide such information to the general public at a designated time at least once a month.

~~(i)~~(h) A marketer shall render a bill to retail customers for services within 30 days of the date following the actual monthly meter reading. ~~A 15 day grace period is permitted prior to the application of any penalty.~~ A marketer´s bill shall utilize the results of the actual meter reading. The price for natural gas billed to a natural gas consumer shall not exceed the marketer´s published price effective at the beginning of the consumer´s billing cycle.

A marketer shall allow the natural gas consumer a reasonable period of time to pay the bill from the date the consumer receives the bill, prior to the application of any late fees or penalties. Marketers shall not impose unreasonable late fees or penalties and in no event shall any such fees or penalties exceed the greater of $10.00 or 1.5 percent of the past due balance.

~~(j)~~(i) Any marketer which willfully violates any provision of this Code section or any duly promulgated rules or regulations issued under this Code section or which fails, neglects, or refuses to comply with any order of the commission after notice thereof shall be liable for any penalties authorized under Code Section 46-2-91.

(j) As used in this subsection, the phrase 'terms and conditions' does not include price. At least 30 days prior to the effective date of any changes in the terms and conditions for service authorized by the marketer´s certificate of authority, a marketer shall file such changes with the commission. Such changes to the terms and conditions of service shall go into effect on the effective date proposed by the marketer; provided, however, that the commission shall be authorized to suspend the effective date of the proposed changes for up to 90 days if it appears to the commission that the proposed terms and conditions are unconscionable or are unfair, deceptive, misleading, or confusing to consumers. If the commission does not issue a final decision on the proposed terms and conditions of service within the 90 day suspension period, the proposed changes shall be deemed approved.″

SECTION 15.

Said article is further amended by inserting new Code sections to be designated Code Sections 46-4-160.3 through 46-4-160.5 to read as follows:

″46-4-160.3.

In order to assist low-income residential consumers, the commission may establish a system by which each marketer´s customers may make voluntary contributions to assist low-income consumers. Contributions received by a marketer shall be deposited in the universal service fund to be used to assist low-income consumers.

46-4-160.4.

(a) There is created the Natural Gas Consumer Education Advisory Board, whose duty it shall be to advise and make recommendations to the director of the consumers´ utility counsel division of the Governor´s Office of Consumer Affairs. The board shall consist of five members who shall be appointed by the Governor and shall include at least one representative for each of the following: marketers, natural gas consumers, and electing distribution companies. There shall be one member appointed from each commission electoral district. Board members shall serve at the pleasure of the Governor.

(b) The board shall elect its chairperson and shall convene upon the call of the administrator at a time and place specified in writing by the administrator. Each member of the board shall serve without pay but shall receive standard state per diem for expenses and receive standard travel allowance while attending meetings and while in the discharge of his or her responsibilities.

(c) The board shall assist the director in an advisory capacity only in carrying out the duties and functions of such official concerning policy matters relating to the development and implementation of state-wide education programs for natural gas consumers or consumers of any other utility that may be deregulated in the future.

46-4-160.5.

(a) Any natural gas consumer who is damaged by a marketer´s violation of any provision of Code Section 46-4-160, any duly promulgated rules or regulations issued under such Code section, or any commission order shall be entitled to maintain a civil action and shall be entitled to recover actual damages sustained by the consumer, as well as incidental damages, consequential damages, reasonable attorney´s fees, and court costs.

(b) Any violation of Code Section 46-4-160 or any duly promulgated rules or regulations issued under such Code section is declared to be a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975.' Any remedy available under such Act shall be available to any natural gas consumer and any action by the administrator that such Act authorizes for a violation of such Act shall be authorized for violation of Code Section 46-4-160 or any duly promulgated rules or regulations issued under such Code section. This subsection shall not be construed to provide that other violations of this article or rules promulgated under this article are not violations of such Act.

(c) The provisions of this Code section shall apply to violations of subsections (g) and (h) of Code Section 46-4-156, Code Sections 46-4-158.2, 46-4-160.1, and 46-4-160.2, and substantial violations of Code Section 46-4-158.3.″

SECTION 16.

Said article is further amended by striking Code Section 46-4-161, relating to the universal service fund, and inserting in lieu thereof the following:

″46-4-161.

(a) The commission shall create for each electing distribution company a universal service fund for the purpose of:

(1) Assuring that gas is available for sale by marketers to firm retail customers within the territory certificated to each such marketer;

(2) Enabling the electing distribution company to expand its facilities and service in the public interest; and

(3) Assisting low-income ~~customers in times of emergency as determined by the commission; and~~ consumers of the regulated provider of natural gas in accordance with Code Section 46-4-166.

~~(4) Providing energy conservation assistance to low-income customers in a fair and equitable manner as determined by the commission; provided, however, that not more than 10 percent of the amount in the universal service fund shall be expended for such purpose in any calendar year.~~

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

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

~~(B)~~(1) The amount required to provide sufficient contributions in aid of construction to permit the electing distribution company to extend and expand its facilities from time to time as the commission deems to be in the public interest; and

~~(C)~~(2) The amount required to assist low-income ~~persons subject to price increases~~ consumers of the regulated provider of natural gas in accordance with Code Section 46-4-166.

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

(c) The fund shall be created and maintained from time to time from the following sources:

(1) Rate refunds to the electing distribution company from its interstate pipeline suppliers;

(2) Any earnings allocable to ratepayers under performance based rates of the electing distribution company authorized by this article;

(3) A surcharge to the rates for firm distribution service of the electing distribution company authorized for such purpose by the commission from time to time; ~~and~~

(4) Surcharges on customers receiving interruptible service over the electing distribution company´s distribution system imposed by the commission and directed to the universal service fund in accordance with Code Section 46-4-154;

(5) Refunds of deposits required by marketers as a condition for service, if such refunds have not been delivered to or claimed by the consumer within two years;

(6) Funds deposited by marketers in accordance with Code Section 46-4-160.3; and

~~(4)~~(7) Any other payments to the fund provided by law.

(d) Any amounts remaining in such fund at the end of a fiscal year ~~shall~~ may be available for refund to retail customers, including customers who receive firm distribution service and customers who receive interruptible distribution service, in such manner as the commission shall deem equitable. The balance at fiscal year end, whether positive or negative, after such refund, if any, shall become the initial balance of the fund for the ensuing fiscal year and shall be considered by the commission in making the determination required in subsection (b) of this Code section.

(e) Moneys in the fund shall be deposited in a separate, interest-bearing escrow account maintained by the electing distribution company at any state or federally chartered bank, trust company, or savings and loan association located in this state. Upon application to the commission, the commission shall order the distribution of an appropriate portion of such moneys on a quarterly basis and in accordance with the provisions of this Code section. Interest earned on moneys in the fund shall accrue to the benefit of the fund.

~~(f) In determining whether to grant the application of a marketer for a distribution from the fund in whole or in part, the commission shall consider:~~

~~(1) The expenditures reasonably required for commodity sales by a marketer within the relevant territory based upon the cost of gas as established by published cost indexes, the transportation charges of the interstate pipeline involved, and the rates for firm distribution service of the electing distribution company. The commission shall also consider the actual costs incurred to serve the customers and revenues available to the marketer from sales within the affected territory available to provide a fair return to the marketer;~~

~~(2) Whether the marketer pursued reasonable diligence in seeking to recover the uncollectable accounts; and~~

~~(3) The reduction to the total amount of the uncollectable accounts appropriate to assure that marketers pursue reasonable diligence in their collection efforts.~~

(f) Distributions to the regulated provider shall be made in accordance with Code Section 46-4-166.

(g)(1) In determining whether to grant the application of an electing distribution company for a distribution from the fund in whole or in part, the commission shall consider:

(A) The capital budget of the electing distribution company for the relevant fiscal year;

(B) The estimated total overall applicable cost of the proposed extension, including construction costs, financing costs, working capital requirements, and engineering and contracting fees, as well as all other costs that are necessary and reasonable;

(C) The projected initial service date of the new facilities, the estimated revenues to the electing distribution company during the first five fiscal years following the initial service date, and the estimated rate of return to the electing distribution company produced by such revenues during each such fiscal year;

(D) The amount of the contribution in aid of construction required for the revenues from the proposed new facility to produce a just and reasonable return to the electing distribution company; and

(E) Whether the proposed new facility is in the public interest.

(2) In no event shall the distribution to an electing distribution company from the fund for facilities and service expansion during any fiscal year exceed 5 percent of the capital budget of such company for such fiscal year.

(3) Any investment in new facilities financed from the universal service fund shall be accounted for as a contribution in aid of construction.″

SECTION 17.

Said article is further amended by striking in its entirety Code Section 46-4-164, relating to construction of the article, and inserting in lieu thereof the following:

″46-4-164.

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

(b) Notwithstanding any provision of law to the contrary, including, without limitation, Article 4 of Chapter 3 of this title, an electric membership corporation may make and maintain investments in, lend funds to, and guarantee the debts and obligations of an EMC gas affiliate in total not to exceed 15 percent of such electric membership corporation´s net utility plant; and an EMC gas affiliate of an electric membership corporation organized and operating pursuant to Article 4 of Chapter 3 of this title may apply for and be granted a certificate of authority to provide any service as authorized under this article. The creation,

capitalization, or provision of management for (1) an EMC gas affiliate engaged in activities subject to the provisions of this article and the rules and regulations established by the commission or (2) other persons providing customer services shall be deemed to be among the purposes of an electric membership corporation as specified in paragraphs (2) and (3) of Code Section 46-3-200. Nothing in this article shall be deemed to increase or decrease the authority and jurisdiction of the commission with respect to such electric membership corporation except as to gas activities undertaken by the electric membership corporation or its EMC gas affiliate as authorized under this chapter.″

SECTION 18.

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

″46-4-166.

(a) By July 1, 2002, the commission shall select a regulated provider of natural gas to serve:

(1) Group 1, low-income residential consumers; and

(2) Group 2, firm natural gas consumers:

(A) Whose credit or payment history was cited by a marketer as reason for refusal of service; or

(B) Whose payment history was cited by the regulated provider as reason for transfer from Group 1 to Group 2.

(b) The selection shall be made through a competitive request for proposal process. Certificated marketers shall be eligible to submit proposals. Selection criteria for the regulated provider shall include, but not be limited to, the following:

(1) Financial viability, as defined in Code Section 46-4-153;

(2) Technical expertise, as defined in Code Section 46-4-153;

(3) The amount of the proposed deposit requirements, proposed price structure, proposed customer charge, and cost recovery;

(4) The terms and conditions proposed for transfers of consumers from Group 1 to Group 2 and from Group 2 to Group 1; and

(5) The terms and conditions proposed for termination of service for Group 1 consumers and Group 2 consumers.

(c) If no proposals are filed with the commission to become the regulated provider of natural gas, the commission shall designate the electing distribution company, or, if it consents, any other gas or electric utility holding a certificate of public convenience and necessity from the commission to serve as the regulated provider of natural gas. A regulated provider who is not a certificated marketer shall not be authorized to provide

natural gas commodity service to any consumer not included in subsection (a) of this Code section.

(d) The regulated provider selected by the commission shall establish two rates for consumers served by the regulated provider of natural gas, which rates shall be approved by the commission as a part of the selection process for the regulated provider:

(1) The rate for a low-income residential consumer shall be based upon actual commodity cost, a reasonable rate of return, and costs for transportation and distribution, if applicable. Any low-income residential consumer may transfer to the regulated provider without being required to pay in full any debt to a marketer for previous service and without termination in service due to failure to pay such a debt. The regulated provider shall have access to the universal service fund to recover bad debt arising from service to low-income residential consumers in accordance with rules and regulations promulgated by the commission and designed to encourage efficient debt collection practices by the regulated provider. The electing distribution company shall waive any base distribution charge for each low-income residential consumer whose age exceeds 65 years. A low-income residential consumer served by the regulated provider at this rate shall be subject to transfer to Group 2 for failure to pay distribution or commodity charges under the terms and conditions specified in the proposal and accepted by the commission; and

(2) The rate for Group 2 consumers shall be set to incorporate risks associated with these customers. The regulated provider shall be authorized to terminate service to a Group 2 consumer for failure to pay for commodity or distribution service. The regulated provider shall not have access to the universal service fund to recover bad debt arising from service to such consumers. A Group 2 consumer shall be eligible to transfer to Group 1 if such a consumer is eligible by income for Group 1 and meets criteria specified in the proposal and accepted by the commission.

(e) The commission is authorized to promulgate rules and regulations to implement this Code section.

(f) The commission shall annually review the performance of the regulated provider. The commission shall utilize the process set forth in subsections (a) and (b) of this Code section to select a regulated provider of natural gas every two years. If the commission determines, in its discretion, that such an action is in the public interest, the commission may extend the service of a regulated provider for a third year, or may terminate the service of a regulated provider after one year.″

SECTION 19.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 20.

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