

The Senate Finance and Public Utilities Committee offered the following substitute to HB 1568:

A BILL TO BE ENTITLED  
AN ACT

1 To enact the "Natural Gas Consumers' Relief Act"; to amend Chapter 2 of Title 46 of the  
2 Official Code of Georgia Annotated, relating to the Public Service Commission, so as to  
3 allow 90 days for commission orders after a hearing regarding electric fuel cost recovery or  
4 adoption or amendment of natural gas capacity supply plans; to authorize the Public Service  
5 Commission to seek an injunction against the violation of any law administered by the  
6 commission or any rule, order, or regulation established by the commission; to amend Article  
7 5 of Chapter 4 of Title 46 of the Official Code of Georgia Annotated, the "Natural Gas  
8 Competition and Deregulation Act," so as to revise extensively and comprehensively; to  
9 revise legislative findings and intent; to provide a bill of rights for consumers; to revise  
10 definitions; to provide for a continuing requirement of financial and technical ability for  
11 marketers; to provide that EMC gas affiliates are eligible to receive certificates of authority  
12 as marketers; to provide for terms and conditions governing the relationship between an  
13 electric membership corporation and its EMC gas affiliate; to provide for a reasonable  
14 method of rate design; to provide that a fee for distribution services shall not be required for  
15 certain billing periods; to change a provision relating to an electing distribution company's  
16 revenues from interruptible service; to authorize a surcharge on customers receiving  
17 interruptible service; to require a hearing relating to direct assignment of interstate capacity  
18 assets; to authorize the commission to allocate the cost of unaccounted for and lost gas; to  
19 clarify and change provisions relating to changing marketers; to change a provision relating  
20 to the amount of deposits charged to natural gas consumers; to provide for additional  
21 circumstances when the commission is authorized to issue temporary directives to protect  
22 retail customers; to require an electing distribution company to cooperate with certificated  
23 marketers and the regulated provider; to provide for service quality standards for electing  
24 distribution companies, commission review of performance with regard to such standards,  
25 and penalties; to provide for rules governing marketers' terms of service, disclosure by  
26 marketers, the contents of consumer bills, and review for compliance with such rules; to  
27 provide certain remedies for consumers determined to be victims of slamming; to prohibit  
28 a marketer responsible for slamming a consumer from making certain reports to credit

1 reporting agencies and provide for payment to consumers for violations; to provide that  
 2 certain consumer protection rules shall be self-executing; to delete a provision prohibiting  
 3 refusal to sell gas by marketers in certain circumstances; to prohibit estimated bills,  
 4 unreasonable late fees, and retroactive rate increases; to provide for filing changes in the  
 5 terms and conditions for service with the commission and for the commission's authority  
 6 related to such changes; to provide for a system for voluntary contributions to assist  
 7 low-income residential consumers; to create the Natural Gas Consumer Education Advisory  
 8 Board and provide for the duty, members, officers, appointment of members, and expenses  
 9 of members of such board; to provide for a private right of action and for the application of  
 10 Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975"; to  
 11 change certain provisions relating to the universal service fund; to provide for certain powers  
 12 and purposes of electric membership corporations relating to natural gas; to provide for  
 13 construction; to provide for selection of a regulated provider; to provide for the terms,  
 14 conditions, rates, and customers for regulated gas services; to provide for reimbursements  
 15 from the universal service fund in certain circumstances; to provide for payment of certain  
 16 fines into the Natural Gas Consumers' Refund Fund; to provide for use of moneys in such  
 17 fund for refunds to consumers of firm distribution service of natural gas; to provide for  
 18 related matters; to provide an effective date; to repeal conflicting laws; and for other  
 19 purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

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

23 **SECTION 2.**

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

30 "(e) Following such hearing, the commission shall issue an order stating the base rates to  
 31 be used by the utility during the next three consecutive calendar months, or until changed  
 32 as provided in this Code section. Should the commission fail or refuse to issue such order

1 by the ~~forty-fifth~~ ninetieth day after the utility's filing, the base rates proposed by the utility  
2 shall thereupon be deemed adopted by operation of law."

### 3 SECTION 3.

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

6 "46-2-95.

7 The commission may bring a civil action to enjoin the violation of any law administered  
8 by the commission or any rule, order, or regulation established by the commission. It shall  
9 not be necessary to allege or prove that there is no adequate remedy at law to obtain an  
10 injunction under this Code section."

### 11 SECTION 4.

12 Chapter 2 of Title 46 of the Official Code of Georgia Annotated, relating to the Public  
13 Service Commission, is amended by striking Code Section 46-2-32, relating to payment of  
14 fines and the cumulative nature of remedies, and inserting in lieu thereof the following:

15 "46-2-32.

16 (a) Except as otherwise provided in subsection (b) of this Code section, all ~~At~~ fines  
17 recovered under this title shall be paid into the general fund of the state treasury, to be used  
18 for such purposes as the General Assembly may provide.

19 (b) Fines recovered under the provisions of Article 5 of Chapter 4 of this title, the 'Natural  
20 Gas Competition and Deregulation Act,' shall be deposited in the Natural Gas Consumers'  
21 Refund Fund. The moneys in the Natural Gas Consumers' Refund Fund shall be allocated  
22 by order of the Public Service Commission for refunds to consumers of firm distribution  
23 service of natural gas under such article. The provisions of this subsection shall apply to  
24 fines resulting from application of Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair  
25 Business Practices Act of 1975,' to marketers or electing distribution companies in  
26 accordance with the provisions of Article 5 of Chapter 4 of this title.

27 (c) The remedies provided in this title shall be regarded as cumulative of all other remedies  
28 given by law against railroad companies, and this title shall not be construed as repealing  
29 any statute giving such remedies."

### 30 SECTION 5.

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

1 "46-4-151.

2 (a) The General Assembly finds:

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

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

11 (3) All consumers deserve to receive natural gas service on reasonable terms and at  
12 reasonable prices; and

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

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

17 (1) Promote competition in the natural gas industry;

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

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

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

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

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

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

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

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

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

35 (B) All consumers must have the right to receive accurate, easily understood  
36 information about gas marketers, services, plans, terms and conditions, and rights and

1 remedies. The information must be unbiased, accurate, and understandable in a written  
 2 form, which allows for comparison of prices and terms of service;

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

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

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

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

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

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

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

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

## 24 SECTION 6.

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

27 "46-4-152.

28 As used in this article, the term:

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

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

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

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

6 (4.1) 'Consumer' means a retail customer of commodity sales service or of firm  
7 distribution service who uses such service or services primarily for personal, family, or  
8 household purposes.

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

15 (5.1) 'Cramming' means billing for goods or services not requested or authorized by a  
16 consumer.

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

21 (7) 'Customer service' means a function related to serving a retail customer including  
22 without limitation billing, meter reading, turn-on service, and turn-off service.  
23 Notwithstanding any provision of law to the contrary, any person may perform one or  
24 more customer services without first becoming certificated in accordance with Code  
25 Section 46-4-153; provided, however, that such service may only be performed in  
26 compliance with all state and federal laws pertaining to the safety of natural gas pipelines  
27 and distribution systems and any other applicable safety standards.

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

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

34 (10) 'Electing distribution company' means a gas company which elects to become  
35 subject to the provisions of this article and satisfies the requirements of Code Section  
36 46-4-154.

1 (10.1) 'Electric membership corporation' or 'EMC' means any person defined in  
2 paragraph (3) or (5) of Code Section 46-3-171.

3 (10.2) 'Electric utility' means any electric power company subject to the rate regulation  
4 of the commission in accordance with Code Sections 46-2-20 and 46-2-21.

5 (10.3) 'Electricity activities' means all activities associated with the generation,  
6 transportation, marketing, and distribution of electricity.

7 (10.4) 'EMC gas affiliate' means a separately organized person, the majority interest of  
8 which is owned or held by or, with respect to a cooperative, managed by one or more  
9 cooperatives or electric membership corporations and which applies to the commission  
10 for a certificate of authority pursuant to Code Section 46-4-153.

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

13 (11.1) 'Gas activities' means all activities associated with the transportation, marketing,  
14 and distribution of natural gas conducted by a person certificated pursuant to Code  
15 Section 46-4-153. Such term shall not mean the production, transportation, marketing,  
16 or distribution of liquefied petroleum gas.

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

19 (12.1) 'Low-income residential consumer' shall include any residential consumer of  
20 natural gas identified by the Department of Human Resources as eligible for public  
21 assistance in paying bills for natural gas service in accordance with Code Section 46-1-5.

22 (12.2) 'Majority interest' means the ownership of greater than 50 percent of:

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

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

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

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

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

33 (14.1) 'Regulated gas service' means gas service provided by a regulated provider of  
34 natural gas.

1 (14.2) 'Regulated provider of natural gas' means the entity selected by the commission  
 2 to provide to consumers natural gas commodity service and ancillary services incident  
 3 thereto in accordance with Code Section 46-4-166.

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

6 (15.1) 'Slamming' means changing or causing a change of a consumer's service from one  
 7 marketer or provider to another marketer or provider without request or authorization  
 8 from the consumer.

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

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

#### 14 SECTION 7.

15 Said article is further amended in Code Section 46-4-153, relating to certificates of authority,  
 16 by adding a new subsection (f) to the end thereof and by striking paragraph (1) of subsection  
 17 (a) and striking subsection (d) and inserting in their respective places the following:

18 "(a)(1) No person other than a gas company or a regulated provider shall sell or offer to  
 19 sell in intrastate commerce to any retail customer who receives primarily firm service  
 20 within this state any commodity sales service or distribution service without first  
 21 obtaining a certificate of authority from the commission covering the territory where such  
 22 retail customer is located. Notwithstanding any provision of law to the contrary, any  
 23 person selected by an electing distribution company, a certificated marketer, or a  
 24 regulated provider may perform billing and meter reading services on behalf of such  
 25 entity without first becoming certificated in accordance with the provisions of this Code  
 26 section, provided that a certificated marketer or a regulated provider also submits the  
 27 meter reading data so obtained to the electing distribution company in a timely manner."

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

34 "(f) All gas marketers are required to continue to possess financial and technical capability  
 35 to render service and offer service pursuant to contractual terms and conditions the

1 commission from time to time finds economically viable for delivery groups served. This  
 2 is a continuing obligation and may be reviewed by the commission at any time."

### 3 SECTION 8.

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

6 "46-4-153.1.

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

17 (b) The order by the commission pursuant to this Code section shall include the  
 18 requirements set forth in this subsection, as well as such other rules as the commission shall  
 19 determine are necessary to protect electric and natural gas consumers and promote  
 20 competition:

21 (1) To ensure that cross-subsidizations do not occur between the electricity services of  
 22 an electric membership corporation and the gas activities of its gas affiliate, the terms and  
 23 conditions ordered by the commission shall provide that each electric membership  
 24 corporation having a gas affiliate shall:

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

29 (B) Develop and maintain a cost allocation manual, approved by the commission,  
 30 describing the electric membership corporation's methods of cost allocation and such  
 31 other information and policies reasonably required by the commission to ensure  
 32 compliance with this article and the terms and conditions ordered by the commission.

33 Such manual shall:

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

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

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

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

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

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

20 (c) The commission may require that any customer service that an electric membership  
21 corporation provides to its gas affiliate be offered to all marketers at the same rate and on  
22 the same terms and conditions as provided to the gas affiliate. Any such services provided  
23 to the gas affiliate or marketers must be on a strictly confidential basis, such that the  
24 electric membership corporation does not share information regarding one marketer with  
25 any other marketer, including an EMC gas affiliate.

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

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

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

**SECTION 9.**

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.~~

~~(e)~~(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~~ 2 percent of the revenues the electing distribution company received from rates for interruptible service. Each electing distribution company which retains ~~10~~ 2 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;

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

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

7 ~~(e)~~(d) Notwithstanding any other provision of this title, the commission shall hold a  
8 hearing regarding an application filed pursuant to this Code section and may suspend the  
9 operation of the proposed schedules and defer the use of the proposed rates, charges,  
10 classifications, or services for a period of not longer than six months.

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

## 21 SECTION 10.

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

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

27 (2) If, pursuant to the provisions of this article, the rates for commodity sales service of  
28 an electing distribution company within a delivery group or groups become no longer  
29 subject to the approval of the commission nor to the provisions of Code Section  
30 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible  
31 for acquiring and contracting for the interstate capacity assets necessary for gas to be  
32 made available on its system, whether directly or by assignment to marketers, for firm  
33 distribution service to retail customers within such delivery group or groups unless  
34 determined otherwise by the commission in accordance with this subsection.

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

8 (4) Not less than ten days after any such filing by an electing distribution company, the  
9 commission shall conduct a public hearing on the filing. The electing distribution  
10 company's testimony shall be under oath and shall, with any corrections thereto,  
11 constitute the electing distribution company's affirmative case. At any hearing conducted  
12 pursuant to this subsection, the burden of proof to show that the proposed capacity supply  
13 plan is appropriate shall be upon the electing distribution company.

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

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

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

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

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

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

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

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

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

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

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

26 (12) After an electing distribution company has no obligation to provide commodity  
27 sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and  
28 upon the petition of any interested person and after notice and opportunity for hearing  
29 afforded to the electing distribution company, all parties to the most current proceeding  
30 establishing a capacity supply plan for such electing distribution company, the  
31 consumers' utility counsel division of the Governor's Office of Consumer Affairs, and  
32 all marketers who have been issued a certificate of authority pursuant to Code Section  
33 46-4-153, the commission may issue an order eliminating the responsibility of the  
34 electing distribution company for acquiring and contracting for interstate capacity assets  
35 necessary for gas to be made available on its system as well as the obligation of such  
36 electing distribution company to file any further capacity supply plans with the

1 commission pursuant to the provisions of this subsection, if the commission determines  
2 that:

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

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

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

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

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

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

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

**SECTION 11.**

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 (c), (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 ~~(b)~~ (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."

"(c) If the commission issues an order pursuant to subsection (b) of this Code section determining that adequate market conditions exist, it shall prescribe in such order the contents of notices to be furnished pursuant to the provisions of subsection (e) of this Code section. Subject to the provisions of subsection (d) of this Code section, on the one hundred twentieth day following the issuance of an order for a particular delivery group:

(1) Except as otherwise provided in paragraph (4) of this subsection, the ~~The~~ rates and terms of service of an electing distribution company for interruptible distribution service and balancing service shall not be subject to approval by the commission, provided that all firm retail customers have contracted with or have been assigned to marketers as provided for in this Code section;

(2) Except as otherwise provided in paragraph (4) of this subsection, The ~~The~~ rates and terms of service for commodity sales service provided by an electing distribution company to retail purchasers of firm distribution service shall not be subject to approval by the commission, provided that all firm retail customers have contracted with or have been assigned to marketers as provided for in this Code section; ~~and~~

(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

1 underground storage by an electing distribution company to marketers, as necessary for  
 2 marketers to initiate service to all firm retail customers with which they have contracted  
 3 or to which they have been assigned as provided for in this Code section, whether by  
 4 allocation pursuant to a tariff approved under paragraph (3) or (4) of subsection (d) of  
 5 Code Section 46-4-154 or by contract, are effective pursuant to the terms of such tariff  
 6 or contract and, provided, further, that all initial assignments of rights under firm  
 7 wellhead gas supply contracts by an electing distribution company to marketers, as  
 8 necessary for marketers to initiate service to all firm retail customers with which they  
 9 have contracted or to which they have been assigned as provided for in this Code section,  
 10 by allocation pursuant to a tariff approved under Code Section 46-4-154 are effective  
 11 pursuant to the terms of such tariff, an electing distribution company has no obligation  
 12 to provide commodity sales service to retail customers; and

13 (4) The commission is authorized to provide by order, after notice and hearing, for the  
 14 allocation of the cost of unaccounted for and lost gas among interruptible and firm retail  
 15 customers in relation to the portion of the total use of natural gas in Georgia that is used  
 16 by interruptible retail customers and that is used by firm retail customers."

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

27 (h) A marketer may require a deposit, not to exceed \$150.00, from a ~~retail customer~~  
 28 consumer prior to providing gas distribution service to such ~~customer~~; ~~provided, however,~~  
 29 ~~that such deposit cannot exceed 100 percent of the customer's average monthly bill based~~  
 30 ~~on past customer usage and current marketer prices~~ consumer. A marketer is not  
 31 authorized to require an increase in the deposit of a consumer if such consumer has paid  
 32 all bills from the marketer in a timely manner for a period of three months. A marketer  
 33 shall refund to any consumer who is not currently delinquent on payments to the marketer  
 34 any deposit amount exceeding \$150.00 within 30 days following the effective date of this  
 35 subsection. In any case where a marketer has required a deposit from a ~~retail customer~~  
 36 consumer and such ~~customer~~ consumer has paid all bills from the marketer in a timely

1 manner for a period of six months, the marketer shall be required to refund the deposit to  
 2 the ~~customer~~ consumer within 60 days. In any event, a deposit shall be refunded to a ~~retail~~  
 3 ~~customer~~ consumer within 60 days of the date that a ~~retail customer~~ such consumer  
 4 changes marketers or discontinues service, provided ~~the retail customer~~ that such consumer  
 5 has satisfied all of his or her outstanding financial obligations to the marketer."

## 6 SECTION 12.

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

9 "46-4-157.

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

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

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

24 then the commission, on an emergency basis, may by order temporarily impose such  
 25 directives on gas companies subject to its jurisdiction as are required to protect the interests  
 26 of firm retail customers in such delivery group including but not limited to price  
 27 regulations and the imposition upon the electing distribution company of the obligation to  
 28 serve retail customers in such delivery group under the same or similar conditions to those  
 29 under which such customers were served prior to customer assignment in such delivery  
 30 group. In no event shall such emergency directives extend beyond the first day of July  
 31 immediately following the next full annual session of the General Assembly after the  
 32 imposition of such directives. In its order the commission shall provide for recovery of all  
 33 costs reasonably incurred by the electing distribution company in complying with the  
 34 directives. Any such directives shall be drawn as narrowly as possible to accomplish the  
 35 purpose of protecting the public on an interim basis. No such directive shall impose any

1 condition upon the electing distribution company which unreasonably burdens the  
2 company. Such directives shall be immediately reviewable in the Superior Court of Fulton  
3 County in the same manner and subject to the same procedures as the review of any other  
4 contested case under the provisions of Code Section 50-13-19. ~~The provisions of this Code~~  
5 ~~section shall not apply to a delivery group for which customer assignment occurred more~~  
6 ~~than four years prior to the date of notice of the expedited hearing.~~

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

28 (b) If, in an expedited hearing pursuant to the provisions of Chapter 13 of Title 50, the  
29 'Georgia Administrative Procedure Act,' the commission makes any of the determinations  
30 described in subsection (c) or (d) of this Code section, the commission may, on a temporary  
31 basis, by order impose on marketers such directives as are required to protect the interest  
32 of retail customers in a specific delivery group, including but not limited to price  
33 regulations. In no event shall such emergency directives extend beyond the first day of July  
34 in the year immediately following imposition of such directives. Any such directives shall  
35 be drawn as narrowly as possible to accomplish the purpose of protecting the public on an  
36 interim basis. Such directives shall be immediately reviewable in the Superior Court of

1 Fulton County in the same manner and subject to the same procedures as the review of any  
 2 other contested case under the provisions of Code Section 50-13-19.

3 (c) Upon determination by the commission that market conditions are no longer  
 4 competitive, the commission may impose directives as described in subsection (b) of this  
 5 Code section. For purposes of this subsection, market conditions shall not be considered  
 6 competitive if more than 90 percent of retail customers in a specific delivery group are  
 7 served by three or fewer marketers; provided, however, that marketers who are affiliates  
 8 shall be deemed to be one marketer for purposes of this subsection.

9 (d) Upon determination by the commission, based upon a standard previously adopted by  
 10 rule of the commission, that prices paid by retail customers for natural gas in a specific  
 11 delivery group are not constrained by market forces and are significantly higher than such  
 12 prices would be if they were constrained by market forces, the commission may impose  
 13 directives as described in subsection (b) of this Code section."

### 14 SECTION 13.

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

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

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

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

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

30 (4) Cooperate with each certificated marketer and each regulated provider of natural gas  
 31 to achieve the intentions of this article set out in subsection (b) of Code Section  
 32 46-4-151."

### 33 SECTION 14.

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

3 "46-4-158.1.

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

11 (2) Not later than September 1, 2002, the commission shall promulgate rules and  
12 regulations to establish service quality standards for each certificated marketer and  
13 regulated provider, which may include minimal performance standards for call center  
14 response times, billing, meter reading, and any other service quality standards deemed  
15 necessary by the commission. Each service quality standard adopted by the commission  
16 applicable to an electing distribution company shall also apply to each certificated  
17 marketer and each regulated provider to the extent that a certificated marketer or a  
18 regulated provider provides similar customer services.

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

23 (c) Failure to comply with service quality standards established in accordance with this  
24 Code section shall subject an electing distribution company, certificated marketer, or  
25 regulated provider to fines as determined by the commission. Fines assessed under this  
26 subsection shall be payable to the universal service fund.

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

29 (e) If the commission determines that an electing distribution company has failed to  
30 satisfactorily meet the performance standards for system forecasting, including setting the  
31 daily supply requirement and the marketer firm obligation, or has otherwise demonstrated  
32 an inability to perform such function properly, then the commission may enter an order  
33 relieving the electing distribution company of its system forecasting responsibilities and  
34 may establish a competitive request for proposal process to select an independent entity  
35 with the technical and financial ability to perform the role of system forecasting, including  
36 setting the daily supply requirement and the marketer firm obligation. The agreement for

1 system forecasting shall include standards for evaluating the performance of the forecaster  
2 and for awarding incentives for superior performance and imposing disincentives for  
3 unsatisfactory performance. The commission shall establish an appropriate mechanism to  
4 recover the cost of performing such functions.

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

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

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

11 (g) Any independent auditor selected in accordance with subsection (f) of this Code  
12 section shall prepare a semiannual audit report to the commission. Unless a written  
13 objection clearly specifying one or more errors or inaccuracies in the audit report is filed  
14 within ten days after the audit report is filed with the commission, the audit report shall be  
15 accepted by the commission. If an objection is filed, the commission shall conduct an  
16 expedited hearing within ten days after the objection is filed to determine whether to accept  
17 the audit report. A final decision shall be issued five days after such a hearing. An audit  
18 report, along with its status as accepted or not accepted by the commission, shall be  
19 admissible in any litigation relating to transactions described or evaluated in the audit  
20 report.

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

23 46-4-158.2.

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

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

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

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

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

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

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

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

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

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

23 46-4-158.3.

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

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

33 (A) For fixed rate charges for natural gas service, a clear disclosure of the components  
 34 of the fixed rate, the actual prices charged by the marketer, presented in a single  
 35 standard pricing unit which includes any charges imposed by the marketer or its agent,

1 so that the consumer can compare rates among marketers. This disclosure shall not  
2 include state and local sales taxes. The standard pricing disclosure unit must include  
3 all recurring monthly charges;

4 (B) For variable rate charges for natural gas service, a clear and understandable  
5 explanation of the factors that will cause the price to vary and how often the price can  
6 change, the current price, and the ceiling price, if any, so that the consumer can  
7 compare rates among marketers. The current price and ceiling price, if applicable, shall  
8 be presented in a single standard pricing unit which includes any charges imposed by  
9 the marketer or its agent. This disclosure shall not include state and local sales taxes.  
10 The standard pricing disclosure unit must include all recurring monthly charges;

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

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

15 (E) The billing interval, the method by which monthly charges imposed by the electing  
16 distribution company will be billed to the consumer in the event the consumer  
17 commences or terminates service with the marketer during the billing interval, and any  
18 late payment, cancellation, or reconnection fees;

19 (F) The marketer's budget billing, payment, credit, deposit, cancellation, collection,  
20 and reconnection policies and procedures;

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

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

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

28 (J) The following statement:

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

33 (K) The following statement:

34 'If you have a fixed term agreement with us and it is approaching the expiration date,  
35 or whenever we propose to change our terms of service in any type of agreement, you

1 will receive written notification from us prior to the date of expiration of or change  
2 to the agreement. We will explain your options to you in this advance notification.;

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

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

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

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

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

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

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

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

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

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

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

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

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

31 46-4-158.4.

32 The commission shall continually review marketers' compliance with rules promulgated  
33 in accordance with Code Sections 46-4-158.2 and 46-4-158.3."

34 **SECTION 15.**

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

4 "46-4-160.

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

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

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

9 (3) Adopt reasonable rules governing service quality. In promulgating consumer  
10 protection rules under this article, the commission shall, to the extent practicable, provide  
11 for rules with a self-executing mechanism to resolve such complaints in a timely manner.

12 Such consumer protection rules shall encourage marketers to resolve complaints without  
13 recourse to the commission and shall expedite the handling of those complaints that do  
14 require action by the commission by providing, where practicable, set remedies and  
15 penalties, including but not limited to fines, for violations of the rules;

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

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

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

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

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

34 ~~(c) A marketer shall not refuse to sell gas to a potential firm retail customer within the~~  
35 ~~territory covered by the marketer's certificate of authority if the sale can be made by the~~  
36 ~~marketer pursuant to the rules for service authorized by the marketer's certificate of~~

1 ~~authority and upon terms that will provide the marketer with just and adequate~~  
 2 ~~compensation. The~~ Except as otherwise provided by this article, the price at which a  
 3 marketer sells gas shall not be ~~fixed~~ regulated by the commission.

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

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

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

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

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

26 ~~(i)~~(h) A marketer shall render a bill to retail customers for services within 30 days of the  
 27 date following the actual monthly meter reading. ~~A 15 day grace period is permitted prior~~  
 28 ~~to the application of any penalty.~~ A marketer's bill shall utilize the results of the actual  
 29 meter reading. The price for natural gas billed to a natural gas consumer shall not exceed  
 30 the marketer's published price effective at the beginning of the consumer's billing cycle.  
 31 A marketer shall allow the natural gas consumer a reasonable period of time to pay the bill  
 32 from the date the consumer receives the bill, prior to the application of any late fees or  
 33 penalties. Marketers shall not impose unreasonable late fees or penalties and in no event  
 34 shall any such fees or penalties exceed 1.5 percent of the past due balance.

35 ~~(j)~~(i) Any marketer which willfully violates any provision of this Code section or any duly  
 36 promulgated rules or regulations issued under this Code section or which fails, neglects,

1 or refuses to comply with any order of the commission after notice thereof shall be liable  
2 for any penalties authorized under Code Section 46-2-91.

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

13 (k) Any consumer determined by the commission to be the victim of slamming shall be  
14 able to switch back to his or her desired marketer without any charge. The commission  
15 shall determine the rate per therm to be paid by such a consumer during the period such a  
16 consumer was switched without his or her consent to a different marketer, and any refund  
17 owed to such a consumer by the marketer who switched the consumer without his or her  
18 consent shall be paid within 30 days of the date the commission determined the consumer  
19 was a victim of slamming. No marketer responsible for slamming a consumer who is  
20 determined to be a victim of slamming shall report to a credit reporting agency any moneys  
21 owed by such a consumer to such marketer; any marketer who violates the prohibition set  
22 out in this sentence shall be required by the commission to pay such a consumer \$1,000.00  
23 for each such prohibited report."

#### 24 SECTION 16.

25 Said article is further amended by striking subsection (a) of Code Section 46-4-160.2,  
26 relating to correction of billing errors, and inserting in its place a new subsection to read as  
27 follows:

28 "(a) Whenever a marketer discovers or has called to its attention a billing error or other  
29 mistake reported to or acknowledged ~~or admitted to~~ by the marketer ~~and resulting, the~~  
30 marketer shall have 30 days to correct the billing error from the date said error is reported  
31 to or acknowledged by the marketer. If the marketer does not correct the billing error, the  
32 burden of proof shall be on the marketer to show why the bill is correct. During the period  
33 the billing error is being disputed, the marketer shall neither impose a late fee or penalty  
34 on the disputed amount nor initiate an action to disconnect the customer's service or collect  
35 on the past due balance, if the disputed amount constitutes the total amount of the past due

1 balance. In the event the billing error results in an overpayment by a retail customer of said  
2 marketer, such marketer shall be required automatically and immediately to provide:

- 3 (1) A credit of the amount of the overpayment to the account of the customer; or  
4 (2) A refund of the amount of the overpayment to the customer."

### 5 SECTION 17.

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

8 "46-4-160.3.

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

13 46-4-160.4.

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

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

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

30 46-4-160.5.

31 (a) Any natural gas consumer who is damaged by a marketer's violation of any provision  
32 of Code Section 46-4-160, any duly promulgated rules or regulations issued under such  
33 Code section, or any commission order shall be entitled to maintain a civil action and shall

1 be entitled to recover actual damages sustained by the consumer, as well as incidental  
2 damages, consequential damages, reasonable attorney's fees, and court costs.

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

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

### 15 SECTION 18.

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

18 "46-4-161.

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

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

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

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

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

32 (b)(†) The fund shall be administered by the commission under rules to be promulgated  
33 by the commission in accordance with the provisions of this Code section. Prior to the  
34 beginning of each fiscal year of the electing distribution company, the commission shall

1 determine the amount of the fund appropriate for such fiscal year. In making such  
2 determination, the commission shall consider the following:

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

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

8 ~~(C)(2) The amount required to assist low-income persons subject to price increases~~  
9 ~~consumers of the regulated provider of natural gas in accordance with Code Section~~  
10 ~~46-4-166.~~

11 ~~(2) Notwithstanding any other provisions of this Code section, the commission shall,~~  
12 ~~pursuant to rules and regulations, administer and expend moneys in the fund primarily~~  
13 ~~for the purpose provided in subparagraph (C) of paragraph (1) of this subsection for the~~  
14 ~~24 months immediately succeeding April 27, 2001.~~

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

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

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

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

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

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

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

28 ~~(4)(7) Any other payments to the fund provided by law.~~

29 (d) Any amounts remaining in such fund at the end of a fiscal year shall be available for  
30 refund to retail customers in such manner as the commission shall deem equitable. The  
31 balance at fiscal year end, whether positive or negative, after such refund, if any, shall  
32 become the initial balance of the fund for the ensuing fiscal year and shall be considered  
33 by the commission in making the determination required in subsection (b) of this Code  
34 section.

35 (e) Moneys in the fund shall be deposited in a separate, interest-bearing escrow account  
36 maintained by the electing distribution company at any state or federally chartered bank,

1 trust company, or savings and loan association located in this state. Upon application to the  
 2 commission, the commission shall order the distribution of an appropriate portion of such  
 3 moneys on a quarterly basis and in accordance with the provisions of this Code section.  
 4 Interest earned on moneys in the fund shall accrue to the benefit of the fund.

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

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

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

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

18 (f) Distributions to the regulated provider shall be made in accordance with Code Section  
 19 46-4-166.

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

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

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

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

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

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

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

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

## 6 SECTION 19.

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

9 "46-4-164.

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

19 (b) Notwithstanding any provision of law to the contrary, including, without limitation,  
20 Article 4 of Chapter 3 of this title, an electric membership corporation may make and  
21 maintain investments in, lend funds to, and guarantee the debts and obligations of an EMC  
22 gas affiliate in total not to exceed 15 percent of such electric membership corporation's net  
23 utility plant, excluding electric generation and transmission assets as defined by the Federal  
24 Energy Regulatory Commission Uniform System of Accounts in effect at the time of such  
25 investment, loan, or guarantee, provided that any such investments or loans shall not reflect  
26 rates which are generally available through the use of any tax exempt financing and may  
27 not be tied directly or indirectly to any loans from or guaranteed by the federal or state  
28 government; and an EMC gas affiliate of an electric membership corporation organized and  
29 operating pursuant to Article 4 of Chapter 3 of this title may apply for and be granted a  
30 certificate of authority to provide any service as authorized under this article. The creation,  
31 capitalization, or provision of management for (1) an EMC gas affiliate engaged in  
32 activities subject to the provisions of this article and the rules and regulations established  
33 by the commission or (2) other persons providing customer services shall be deemed to be  
34 among the purposes of an electric membership corporation as specified in paragraphs (2)  
35 and (3) of Code Section 46-3-200. Nothing in this article shall be deemed to increase or

1 decrease the authority and jurisdiction of the commission with respect to such electric  
 2 membership corporation except as to gas activities undertaken by the electric membership  
 3 corporation or its EMC gas affiliate as authorized under this chapter.

4 (c) Nothing in this article shall be construed to allow or authorize an electing distribution  
 5 company, a certificated marketer, or a regulated provider of natural gas to engage in the  
 6 production, transportation, marketing, or distribution of liquefied petroleum gas."

## 7 SECTION 20.

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

10 "46-4-166.

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

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

14 (2) Group 2, firm natural gas consumers:

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

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

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

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

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

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

26 (4) The terms and conditions proposed for transfers of consumers from Group 1 to Group  
 27 2 and from Group 2 to Group 1; and

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

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

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

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

6 (1) The rate for a low-income residential consumer shall be based upon actual  
7 commodity cost, a reasonable rate of return, and an equitable share of the cost of the  
8 transportation and distribution system over which such consumer receives distribution.  
9 Any low-income residential consumer may transfer to the regulated provider without  
10 being required to pay in full any debt to a marketer for previous service and without  
11 termination in service due to failure to pay such a debt. The regulated provider shall have  
12 access to the universal service fund to recover bad debt arising from service to  
13 low-income residential consumers in accordance with rules and regulations promulgated  
14 by the commission and designed to encourage efficient debt collection practices by the  
15 regulated provider. The electing distribution company shall waive any customer charge  
16 for each low-income residential consumer whose age exceeds 65 years. A low-income  
17 residential consumer served by the regulated provider at this rate shall be subject to  
18 transfer to Group 2 for failure to pay distribution or commodity charges under the terms  
19 and conditions specified in the proposal and accepted by the commission; and

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

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

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

**SECTION 21.**

1

2

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

3

**SECTION 22.**

4

5

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