

House Bill 637

By: Representatives Burkhalter of the 41st, Williams of the 83rd, Westmoreland of the 104th,
Smith of the 91st, Bannister of the 77th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
2 public transportation, so as to change the provisions relating to payment of special fee by
3 corporations and utilities subject to the jurisdiction of the Public Service Commission; to
4 change provisions of the "Natural Gas Competition and Deregulation Act"; to change the
5 definition of certain terms; to define additional terms; to provide that a retail customer shall
6 be authorized to change marketers at least twice a year without incurring any service charge
7 relating to such change to an alternative marketer; to limit the amount of deposit that a
8 marketer may require from a retail customer; to require the Public Service Commission to
9 include in public communications in newspapers throughout the state a summary of the price
10 per therm and any other amounts charged to retail customers by each marketer operating in
11 this state and any additional information which the commission deems appropriate to assist
12 customers in making decisions regarding choice of a marketer; to authorize the adoption of
13 rules and regulations relating to billing practices of marketers and their customer services;
14 to change the provisions relating to temporary directives; to authorize said commission to
15 impose temporary directives on marketers under certain conditions; to provide that whenever
16 a marketer discovers or has called to its attention a billing error or other mistake
17 acknowledged or admitted to by the marketer and resulting in an overpayment by a retail
18 customer, such marketer shall be required automatically and immediately to provide a credit
19 or refund of the amount of the overpayment to the customer; to prohibit a marketer from
20 requiring a retail customer to whom it owes a credit or refund to submit in writing a request
21 for such credit or refund before the marketer complies with the provisions of this Act; to
22 require the Public Service Commission to adopt code of conduct rules and enforcement
23 procedures to govern the relationship between an electric membership corporation and its
24 EMC gas affiliate; to provide that the code of conduct rules shall include certain
25 requirements; to limit the amount an electric membership corporation may invest in an EMC
26 gas affiliate; to further regulate the relationship between an electric membership corporation
27 and its EMC gas affiliate; to clarify existing law applicable to the provision of ancillary
28 services; to prescribe certain duties for the Public Service Commission; to provide that an

1 EMC gas affiliate of an electric membership corporation organized and operating pursuant
 2 to certain laws may apply for and be granted a certificate of authority to provide gas services
 3 as authorized under certain provisions of law on the same basis as any other person granted
 4 such authority; to provide that the creation, capitalization, and control of an EMC gas
 5 affiliate engaged in the distribution of gas or other persons providing ancillary services shall
 6 be deemed to be among the purposes of an electric membership corporation; to provide that
 7 nothing in this Act shall be deemed to increase or decrease the authority and jurisdiction of
 8 the Public Service Commission with respect to an electric membership corporation except
 9 as to gas distribution services undertaken by the electric membership corporation or its EMC
 10 gas affiliate as authorized under this Act; to change provisions relating to universal service
 11 funds; to provide authority for assisting elderly and low-income persons with respect to the
 12 cost of gas during the winter heating season; to provide for related matters; to provide an
 13 effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
 17 transportation, is amended by adding at the end of Code Section 46-2-10, relating to payment
 18 of special fee by corporations and utilities subject to the jurisdiction of the Public Service
 19 Commission, a new subsection (d) to read as follows:

20 "(d) For purposes of this Code section, the term 'public service corporations and utilities'
 21 shall include natural gas marketers certified pursuant to Code Section 46-4-153."

22 **SECTION 2.**

23 Said title is further amended by striking in its entirety Code Section 46-4-152, relating to
 24 definitions applicable under Article 5 of Chapter 4 of said title, and inserting in lieu thereof
 25 a new Code Section 46-4-152 to read as follows:

26 "46-4-152.

27 As used in this article, the term:

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

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

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

1 services. Notwithstanding any provision of law to the contrary, any person may perform
2 an ancillary service without first becoming certificated pursuant to Code Section
3 46-4-153.

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

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

13 (6) 'Customer assignment' means the process described in subsection (e) of Code Section
14 46-4-156 whereby retail customers within a particular distribution group who are not
15 under contract for distribution service from a marketer are randomly assigned to
16 certificated marketers.

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

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

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

25 (10) 'Electing distribution company' means a gas company which elects to become
26 subject to the provisions of this article and satisfies the requirements of Code Section
27 46-4-154.

28 (10.1) 'Electric membership corporation' or 'EMC' means any person defined in
29 paragraph (3) or (5) of Code Section 46-3-171.

30 (10.2) 'Electricity activities' means all activities associated with the generation,
31 transportation, marketing, and distribution of electricity.

32 (10.3) 'EMC gas affiliate' means a separately organized person, the majority interest of
33 which is owned or held by or, with respect to a cooperative, managed by one or more
34 cooperatives or electric membership corporations and which applies to the commission
35 for a certificate of authority pursuant to Code Section 46-4-153.

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

1 (11.1) 'Gas activities' means all activities associated with the transportation, marketing,
 2 and distribution of natural gas conducted by a person certificated pursuant to Code
 3 Section 46-4-153. Such term shall not mean the generation, transportation, marketing,
 4 or distribution of liquefied petroleum gas.

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

7 (12.1) 'Majority interest' means the ownership of 51 percent or more of:

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

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

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

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

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

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

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

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

25 **SECTION 3.**

26 Said title is further amended by adding at the end of Code Section 46-4-156, relating to
 27 customer assignment methodology, new subsections (g) and (h) to read as follows:

28 "(g) Notwithstanding any other provision of this article, a retail customer shall be
 29 authorized to change marketers at least twice a year without incurring any service charge
 30 relating to such change to an alternative marketer.

31 (h) A marketer may require a deposit from a retail customer prior to providing gas
 32 distribution service to such customer; provided, however, that such deposit cannot exceed
 33 125 percent of the amount of charges for the projected maximum monthly usage of such
 34 customer based on past customer gas usage and current marketer prices."

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

7 SECTION 5.

8 Said title is further amended by striking in its entirety Code Section 46-4-160, relating to
 9 authority of commission with respect to marketers, and inserting in lieu thereof a new Code
 10 Section 46-4-160 to read as follows:

11 "46-4-160.

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

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

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

16 (3) Adopt reasonable rules governing service quality; and

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

18 (5) Adopt reasonable rules and regulations relating to billing practices of marketers and
 19 information required on customers' bills; and

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

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

29 (c) A marketer shall not refuse to sell gas to a potential firm retail customer within the
 30 territory covered by the marketer's certificate of authority if the sale can be made by the
 31 marketer pursuant to the rules for service authorized by the marketer's certificate of
 32 authority and upon terms that will provide the marketer with just and adequate
 33 compensation. The price at which a marketer sells gas shall not be fixed by the
 34 commission.

35 (d) The commission and the consumers' utility counsel division of the Governor's Office
 36 of Consumer Affairs shall have access to the books and records of marketers as may be

1 necessary to ensure compliance with the provisions of this article and with the
2 commission's rules and regulations promulgated under this article.

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

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

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

12 (h) The commission is required to include in current public communications in newspapers
13 throughout the state a summary of the price per therm and any other amounts charged to
14 retail customers by each marketer operating in this state and any additional information
15 which the commission deems appropriate to assist customers in making decisions regarding
16 choice of a marketer."

17 SECTION 6.

18 Said title is further amended by adding between Code Sections 46-4-160 and 46-4-161 a new
19 Code Section 46-4-160.1 to read as follows:

20 "46-4-160.1.

21 (a) Whenever a marketer discovers or has called to its attention a billing error or other
22 mistake acknowledged or admitted to by the marketer and resulting in an overpayment by
23 a retail customer of said marketer, such marketer shall be required automatically and
24 immediately to provide:

25 (1) A credit of the amount of the overpayment to the account of the customer; or

26 (2) A refund of the amount of the overpayment to the customer.

27 (b) A marketer shall be prohibited from requiring a retail customer to whom it owes a
28 credit or refund to submit in writing a request for such credit or refund before the marketer
29 complies with the provisions of subsection (a) of this Code section."

30 SECTION 7.

31 Said title is further amended by adding between Code Section 46-4-160.1 and 46-4-161 a
32 new Code Section 46-4-160.2 to read as follows:

33 "46-4-160.2.

34 (a) No later than September 30, 2001, the commission shall adopt a code of conduct rules
35 and enforcement procedures to govern the relationship between an electric membership

1 corporation and its EMC gas affiliate. The rules promulgated under this Code section shall
2 be designed to prevent cross-subsidization between the provision of electricity and the
3 provision of natural gas services, to encourage competition by EMC gas affiliates in the
4 marketing of natural gas to retail customers, and to protect the privacy of both electric and
5 gas customers.

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

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

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

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

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

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

27 (iii) Prohibit loans and guarantees from the electric membership corporation to or
28 investment in its EMC gas affiliate so long as the electric membership corporation has
29 any loan or guarantee from the federal or state government or any agency or
30 department thereof remaining outstanding;

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

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

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

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

6 (c) An electric membership corporation may make and maintain investments in, lend funds
 7 to, and guarantee the debts and obligations of an EMC gas affiliate in total not to exceed
 8 15 percent of such electric membership corporation's net utility plant.

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

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

21 SECTION 8.

22 Said title is further amended by striking in their entirety subsections (a) and (b) of Code
 23 Section 46-4-161, relating to universal service funds of electing distribution companies, and
 24 inserting in lieu thereof new subsections (a) and (b) to read as follows:

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

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

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

31 (3) Assisting elderly and low-income customers subject to price increases during the
 32 winter heating season.

33 (b) The fund shall be administered by the commission under rules to be promulgated by
 34 the commission in accordance with the provisions of this Code section. Prior to the
 35 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 (1) The amount required to provide appropriate compensation to marketers with respect
4 to uncollectible accounts arising from commodity sales to firm retail customers; and

5 (2) 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 (3) The amount required to assist elderly and low-income customers subject to price
9 increases during the winter heating season."

10 SECTION 9.

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

14 "46-4-164.

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

24 (b) Notwithstanding any provision of law to the contrary, including, without limitation,
25 Article 4 of Chapter 3 of this title, an EMC gas affiliate of an electric membership
26 corporation organized and operating pursuant to Article 4 of Chapter 3 of this title may
27 apply for and be granted a certificate of authority to provide any service as authorized
28 under this article on the same basis as any other person as defined in Code Section
29 46-4-152. The creation, capitalization, or control of (1) an EMC gas affiliate engaged in
30 activities subject to the provisions of this article and the rules and regulations established
31 by the commission or (2) other persons providing ancillary services shall be deemed to be
32 among the purposes of an electric membership corporation as specified in paragraphs (2)
33 and (3) of Code Section 46-3-200. Nothing in this article shall be deemed to increase or
34 decrease the authority and jurisdiction of the commission with respect to such electric
35 membership corporation except as to gas activities undertaken by the electric membership
36 corporation or its EMC gas affiliate as authorized under this chapter."

1 **SECTION 10.**

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

4 **SECTION 11.**

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