

House Bill 679

By: Representatives Burkhalter of the 41st, Williams of the 83rd, Skipper of the 137th, Snow of the 2nd and Coleman of the 142nd

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 the purposes and powers of
3 electric membership corporations; to change provisions of the "Natural Gas Competition and
4 Deregulation Act"; to change the definition of certain terms; to define additional terms; to
5 require the Public Service Commission to adopt code of conduct rules and enforcement
6 procedures to govern the relationship between an electric membership corporation and its
7 EMC gas affiliate; to provide that the code of conduct rules shall include certain
8 requirements; to limit the amount an electric membership corporation may invest in an EMC
9 gas affiliate; to further regulate the relationship between an electric membership corporation
10 and its EMC gas affiliate; to clarify existing law applicable to the provision of ancillary
11 services; to prescribe certain duties for the Public Service Commission; to provide that an
12 EMC gas affiliate of an electric membership corporation organized and operating pursuant
13 to certain laws may apply for and be granted a certificate of authority to provide gas services
14 as authorized under certain provisions of law on the same basis as any other person granted
15 such authority; to provide that the creation, capitalization, and control of an EMC gas
16 affiliate engaged in the distribution of gas or other persons providing ancillary services shall
17 be deemed to be among the purposes of an electric membership corporation; to provide that
18 nothing in this Act shall be deemed to increase or decrease the authority and jurisdiction of
19 the Public Service Commission with respect to an electric membership corporation except
20 as to gas distribution services undertaken by the electric membership corporation or its EMC
21 gas affiliate as authorized under this Act; to provide for related matters; to provide an
22 effective date; to repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **SECTION 1.**

25 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
26 transportation, is amended by striking in its entirety Code Section 46-3-200, relating to

1 purposes of electric membership corporations, and inserting in lieu thereof a new Code
2 Section 46-3-200 to read as follows:

3 "46-3-200.

4 An electric membership corporation may serve any one or more of the following purposes:

5 (1) To furnish electrical energy and service;

6 (2) To assist its members in the efficient and economical use of energy;

7 (3) To engage in research and to promote and develop energy conservation and sources
8 and methods of conserving, producing, converting, and delivering energy; ~~and~~

9 (4) To engage in any lawful act or activity necessary or convenient to effect the
10 foregoing purposes; and

11 (5) To furnish natural gas and service as authorized by law."

12 SECTION 2.

13 Said title is further amended by striking in their entirety paragraphs (25) and (26) of
14 subsection (b) of Code Section 46-3-201, relating to existence of electric membership
15 corporations under articles of incorporation and powers of corporations generally, and
16 inserting in lieu thereof the following:

17 "(25) To assist any other electric membership corporation in the execution of its purposes
18 and powers under this article; ~~and~~

19 (26) To have and exercise all powers necessary or convenient to effect any or all of the
20 purposes for which the electric membership corporation is organized;

21 (27) To engage in the natural gas business as a marketer as such term is defined in
22 paragraph (13) of Code Section 46-4-152, provided that the electric membership
23 corporation complies with the provisions of Article 5 of Chapter 4 of this title, the
24 'Natural Gas Competition and Deregulation Act,' and rules and regulations of the
25 commission promulgated pursuant to said article; and

26 (28) To contract with any marketer as such term is defined in paragraph (13) of Code
27 Section 46-4-152 to handle billing and provide customer services for such marketer."

28 SECTION 3.

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

32 "46-4-152.

33 As used in this article, the term:

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

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

6 (3) 'Ancillary service' means a service that is ancillary to the receipt or delivery of
7 natural gas, including without limitation storage, balancing, peaking, and customer
8 services. Notwithstanding any provision of law to the contrary, any person may perform
9 an ancillary service without first becoming certificated pursuant to Code Section
10 46-4-153.

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

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

20 (6) 'Customer assignment' means the process described in subsection (e) of Code Section
21 46-4-156 whereby retail customers within a particular distribution group who are not
22 under contract for distribution service from a marketer are randomly assigned to
23 certificated marketers.

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

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

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

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

35 (10.1) 'Electric membership corporation' or 'EMC' means any person defined in
36 paragraph (3) or (5) of Code Section 46-3-171.

1 (10.2) 'Electricity activities' means all activities associated with the generation,
 2 transportation, marketing, and distribution of electricity.

3 (10.3) 'EMC gas affiliate' means a separately organized person, the majority interest of
 4 which is owned or held by or, with respect to a cooperative, managed by one or more
 5 cooperatives or electric membership corporations and which applies to the commission
 6 for a certificate of authority pursuant to Code Section 46-4-153.

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

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

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

15 (12.1) 'Majority interest' means the ownership of 51 percent or more of:

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

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

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

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

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

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

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

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

33 **SECTION 4.**

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

1 "46-4-160.2.

2 (a) No later than September 30, 2001, the commission shall adopt a code of conduct rules
3 and enforcement procedures to govern the relationship between an electric membership
4 corporation and its EMC gas affiliate. The rules promulgated under this Code section shall
5 be designed to prevent cross-subsidization between the provision of electricity and the
6 provision of natural gas services, to encourage competition by EMC gas affiliates in the
7 marketing of natural gas to retail customers, and to protect the privacy of both electric and
8 gas customers.

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

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

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

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

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

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

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

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

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

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

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

8 (c) An electric membership corporation may make and maintain investments in, lend funds
9 to, and guarantee the debts and obligations of an EMC gas affiliate in total not to exceed
10 15 percent of such electric membership corporation's net utility plant.

11 (d) The commission shall accommodate the organizational structures of electric
12 membership corporations; shall prohibit an electric membership corporation and any
13 related entity from sharing directors but shall not prohibit an electric membership
14 corporation and any related entity from sharing officers or employees; and shall permit the
15 use of the electric membership corporation's trade name and logo by the EMC gas affiliate,
16 without remuneration or cost accounting, but subject to the provisions of Part 2 of Article
17 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' and Part 1 of Article
18 15 of Chapter 1 of Title 10, the 'Uniform Deceptive Trade Practices Act.'

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

23 SECTION 5.

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

27 "46-4-164.

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

1 (b) Notwithstanding any provision of law to the contrary, including, without limitation,
2 Article 4 of Chapter 3 of this title, an EMC gas affiliate of an electric membership
3 corporation organized and operating pursuant to Article 4 of Chapter 3 of this title may
4 apply for and be granted a certificate of authority to provide any service as authorized
5 under this article on the same basis as any other person as defined in Code Section
6 46-4-152. The creation, capitalization, or control of (1) an EMC gas affiliate engaged in
7 activities subject to the provisions of this article and the rules and regulations established
8 by the commission or (2) other persons providing ancillary services shall be deemed to be
9 among the purposes of an electric membership corporation as specified in paragraphs (2)
10 and (3) of Code Section 46-3-200. Nothing in this article shall be deemed to increase or
11 decrease the authority and jurisdiction of the commission with respect to such electric
12 membership corporation except as to gas activities undertaken by the electric membership
13 corporation or its EMC gas affiliate as authorized under this chapter."

14 **SECTION 6.**

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

17 **SECTION 7.**

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