

House Bill 522

By: Representatives Roberts of the 154th, Ehrhart of the 36th, and McCall of the 30th

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 provide for discovery in cases involving an application of a gas
3 company to establish a capacity supply plan; to define certain terms; to provide certain
4 requirements for interstate capacity assets which are not retained; to change the Public
5 Service Commission’s review of the assignment of interstate capacity assets from annual to
6 periodic; to provide that a marketer may opt out of a capacity supply plan under certain
7 circumstances; to provide requirements for assignments of interstate assets; to provide that
8 orders concerning utilization or monetization of excess interstate capacity assets must
9 provide for fair allocation of the costs; to provide that an electing distribution company must
10 obtain the approval of the commission, after a public hearing, of procedures relating to how
11 it will comply with the required standards; to provide for related matters; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
16 transportation, is amended by revising subsection (a) of Code Section 46-2-57, relating to
17 obtaining of discovery by employees and agents of the Public Service Commission and the
18 discovery rights of intervenors, as follows:

19 “(a) In any case pending before it, the commission, in addition to its now existing authority
20 to do so, is authorized to issue an order permitting its employees and agents to take
21 depositions and otherwise obtain discovery of any matter, not privileged, which is relevant
22 to the subject matter involved in the investigation, proceeding, or petition before the
23 commission, in the same manner prescribed in Chapter 11 of Title 9 for discovery in civil
24 actions. In any case involving an application of a gas company to establish just and
25 reasonable rates or a capacity supply plan pursuant to Code Section 46-2-23.1 or Code
26 Sections 46-4-154 through 46-4-164, intervenors who are granted party status pursuant to

1 Code Section 46-2-59, as well as the gas company subject to the particular proceeding,
 2 shall have all discovery rights available under Chapter 11 of Title 9."

3 **SECTION 2.**

4 Said title is further amended by revising subsection (e) of Code Section 46-4-155, relating
 5 to interstate capacity assets, as follows:

6 "(e)(1) As used in this subsection, the term:

7 (A) 'Interstate ~~interstate~~ capacity assets' means interstate transportation and out-of-state
 8 gas storage capacity.

9 (B) 'Assignment' means the transfer of all contractual rights and obligations to an
 10 assignee with the assignee receiving the right to act as the shipper under contract.

11 (2) If, pursuant to the provisions of this article, the rates for commodity sales service of
 12 an electing distribution company within a delivery group or groups become no longer
 13 subject to the approval of the commission nor to the provisions of Code Section
 14 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible
 15 for acquiring and contracting for the interstate capacity assets necessary for gas to be
 16 made available on its system, whether directly or by assignment to marketers, for firm
 17 distribution service to retail customers within such delivery group or groups unless
 18 determined otherwise by the commission in accordance with this subsection.

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

26 (4) Not less than ten days after any such filing by an electing distribution company, the
 27 commission shall conduct a public hearing on the filing. The electing distribution
 28 company's testimony shall be under oath and shall, with any corrections thereto,
 29 constitute the electing distribution company's affirmative case. At any hearing conducted
 30 pursuant to this subsection, the burden of proof to show by a standard of clear and
 31 convincing evidence that the proposed capacity supply plan is appropriate shall be upon
 32 the electing distribution company.

33 (5) Following such a hearing, the commission shall issue an order approving the capacity
 34 supply plan filed by the electing distribution company or adopting a capacity supply plan
 35 for the electing distribution company that the commission deems appropriate. Should the
 36 commission fail or refuse to issue an order by the ninetieth day after the electing

1 distribution company's filing which either approves the capacity supply plan filed by the
 2 electing distribution company or adopts a different capacity supply plan for the electing
 3 distribution company, the capacity supply plan proposed by the electing distribution
 4 company shall thereupon be deemed approved by operation of law.

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

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

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

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

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

16 Any interstate capacity assets which are not retained must be either allocated and
 17 released to the marketers under the provisions of the electing distribution company's
 18 tariff with the electing distribution company converting any assets not currently
 19 releasable to interstate service as defined in 18 C.F.R. Part 284 so that they can be
 20 allocated and released or assigned to the marketers under a plan of assignment adopted
 21 pursuant to paragraph (13) of this subsection.

22 (7) Once the commission has approved or adopted a capacity supply plan, a marketer
 23 may choose to opt out of any part of the plan upon a showing before the commission that
 24 the marketer has adequate capacity and supply to serve its customers. Only those ~~When~~
 25 ~~interstate capacity assets that are contained in a capacity supply plan approved or adopted~~
 26 ~~by the commission are~~ selected by a marketer shall be allocated by the electing
 27 distribution company ~~to a~~ to such marketer pursuant to the provisions of this article, ~~all~~
 28 ~~of and only~~ the costs of the interstate capacity assets ~~thus allocated~~ selected shall be borne
 29 by such marketer except for those direct or indirect costs attributable to utilization or
 30 monetization authorized under paragraph (15) of this subsection.

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

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

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

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

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

34 (A) Upon the assignment of any interstate assets currently held by the electing
 35 distribution company to the marketers, the marketers ~~Marketers~~ can and will secure
 36 adequate and reliable interstate capacity assets necessary to make gas available on the
 37 system of the electing distribution company for service to firm retail customers;

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

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

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

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

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

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

30 (14) Any order eliminating the responsibility of the electing distribution company for
31 acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this
32 subsection and any plan for assignment of interstate capacity assets pursuant to paragraph
33 (13) of this subsection shall, at a minimum, ensure that:

34 (A) Shifts in market share are reflected in an orderly reassignment of interstate
35 capacity assets;

36 (B) Marketers accepting such assignment hold sufficient interstate capacity assets to
37 meet the needs of retail customers;

1 (C) Before any such assignment is authorized, the assignee demonstrates to the
 2 commission that such assignment will result in financial benefits to firm retail
 3 customers;

4 (D) Before any marketer discontinues service in the Georgia market, it assigns its
 5 contractual rights for interstate capacity assets used to serve Georgia retail customers
 6 in a manner designated by the commission;

7 (E) In the event that the commission imposes temporary directives in accordance with
 8 Code Section 46-4-157, interstate capacity assets assigned to marketers are subject to
 9 reassignment by the commission to protect the interests of retail customers; and

10 (F) Any other requirement that the commission finds to be in the public interest is
 11 imposed upon assignees as a condition of the assignment of interstate capacity assets.

12 (15) After notice and an opportunity for hearing, the commission may authorize, subject
 13 to reasonable terms and conditions, an electing distribution company or its designee to
 14 utilize or monetize excess interstate capacity assets available to the electing distribution
 15 company. Notwithstanding paragraph (7) of this subsection, any order providing for such
 16 utilization or monetization shall provide for a fair allocation of the costs of the interstate
 17 capacity assets between the electing distribution company and marketers, so that the
 18 marketers shall not subsidize directly or indirectly the utilization or monetization of the
 19 capacity.

20 (16) All marketers holding certificates of authority shall have all discovery rights
 21 available under Chapter 11 of Title 9 in any commission proceedings involving the
 22 electing distribution company. These rights may be enforced pursuant to Code Section
 23 46-2-57. The commission shall also have the right, on its own motion or on the motion
 24 of any party entitled to discovery, to enter and enforce such orders regarding discovery
 25 as the commission may deem appropriate without the necessity of filing any petitions in
 26 the Superior Court of Fulton County or any other court of record."

27 SECTION 3.

28 Said title is further amended by revising paragraph (13) of subsection (b) of Code Section
 29 46-4-159, relating to standards of conduct for electing distribution companies and response
 30 to complaints, as follows:

31 "(13) An electing distribution company must ~~file with~~ obtain the approval of the
 32 commission, after public hearing, of procedures that will enable marketers and the
 33 commission to determine how the electing distribution company is complying with the
 34 standards set forth in this Code section; and"

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SECTION 4.

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