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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION Distribution, Storage, and Sale of Gas: Allow 90 days for Commission Orders After a Hearing Regarding Electric Fuel Cost Recovery or Adoption or Amendment of Natural Gas Capacity Supply Plans; Authorize the Public Service Commission to Seek an Injunction Against the Violation of any Law Administered by the Commission; Change Accounting Procedures for Gas Utility Rate Proceedings; Clarify the Authority of the Commission to Initiate Proceedings to Determine Certain Rates; Provide a Bill of Rights for Consumers; Provide for a Continuing

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Consumers; Require an Electing Distribution Company to Cooperate with Certificated Marketers and the Regulated Provider; Provide for Service Quality Standards for Electing Distribution Companies, Commission Review of Performance with Regard to such Standards, and Penalties; Set Rules Governing Marketers' Terms of Service, Disclosure by Marketers, the Contents of Consumer Bills, and Review for Compliance with such Rules; Create Remedies for Consumers Detained to be Victims of Slamming; Prohibit Estimated Bills, Unreasonable Late Fees, and Retroactive Rate Increases; Set Minimum Standards for Terms and Conditions for Certain Nonresidential Customers and Small Businesses; Assist Low Income Residential Consumers with Voluntary Contributions; Create the Natural Gas Consumer Education Advisory Board and Provide for the Duty, Members, Officers, Appointment of Members, and Expenses of Members of such Board; Provide for the Terms, Conditions, Rates, and Customers for Regulated Gas Services; Allow Reimbursements from the Universal Service Fund in Certain Circumstances

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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Distribution, Storage, and Sale of Gas: Allow 90 days for Commission Orders After a Hearing Regarding Electric Fuel Cost Recovery or Adoption or Amendment of Natural Gas Capacity Supply Plans; Authorize the Public Service Commission to Seek an Injunction Against the Violation of any Law Administered by the Commission; Change Accounting Procedures for Gas Utility Rate Proceedings; Clarify the Authority of the Commission to Initiate Proceedings to Determine Certain Rates; Provide a Bill of Rights for Consumers; Provide for a Continuing Requirement of Financial and Technical Ability for Marketers; Prohibit Certain Methods Relating to Billing and Reading Meters; Provide that EMC Gas Affiliates are Eligible to Receive Certificates of Authority as Marketers; Provide for Terms and Conditions Governing the Relationship Between an Electric Membership Corporation and its EMC Gas Affiliate; Provide for a Reasonable Method of Rate Design; Provide that a Fee for Distribution Services Shall not be Required for Certain Billing Periods; Change a Provision Relating to an Electing Distribution Company's Revenues from Interruptible Distribution Service and Authorize a Surcharge on Certain Customers Receiving Interruptible Service; Require a Hearing Relating to Assignment of Interstate Capacity Assets; Set Out Minimum Requirements for Assignment of Interstate Capacity Assets and Provide for Authorizing Utilization of Excess Interstate Capacity Assets by an Electing Distribution Company; Authorize the Commission to Allocate the Cost of Lost and Unaccounted for Gas; Clarify and Change Provisions Relating to Changing Marketers; Change a Provision Relating to the Amount of Deposits Charged to Natural Gas Consumers; Require an Electing Distribution Company to Cooperate with Certificated Marketers and the Regulated Provider; Provide for Service Quality Standards for Electing Distribution Companies, Commission Review of Performance with Regard to such Standards, and Penalties; Set Rules Governing Marketers' Terms of Service, Disclosure by Marketers, the Contents of Consumer Bills, and Review for Compliance with such Rules; Create Remedies for Consumers Determined to be Victims of Slamming; Prohibit Estimated Bills, Unreasonable Late Fees, and Retroactive Rate Increases; Set

Minimum Standards for Terms and Conditions for Certain Nonresidential Customers and Small Businesses; Assist Low Income Residential Consumers with Voluntary Contributions; Create the Natural Gas Consumer Education Advisory Board and Provide for the Duty, Members, Officers, Appointment of Members, and Expenses of Members of such Board; Provide for the Terms, Conditions, Rates, and Customers for Regulated Gas Services; Allow Reimbursements from the Universal Service Fund in Certain Circumstances.

CODE SECTIONS:	O.C.G.A. §§ 46-2-25, -26, -26.4 (amended), -95 (new), 46-4-151 to -153 (amended), -153.1 (new), -154 to -158 (amended), -158.1 to -158.4 (new), -160, -160.2 (amended), -160.3 to -160.5 (new), -161, -164 (amended), -166 (new)
BILL NUMBER:	HB 1568
ACT NUMBER:	499
GEORGIA LAWS:	2002 Ga. Laws 475
SUMMARY:	The Act increases the time period for the Public Service Commission (PSC) to issue orders regarding electric fuel cost recovery or natural gas capacity plans, authorizes the Commission to seek an injunction, clarifies the Commission's authority to initiate certain rate proceedings, and changes accounting procedures for gas utility rate proceedings. The Act also provides for a Consumers' Bill of Rights. The Act changes certain provisions relating to billing, reading meters, deposits, and changing marketers. The Act also prohibits charging distribution fees when a consumer's gas service is turned off. The Act provides remedies for

slamming and prohibits estimated bills, unreasonable late fees, and retroactive rate increases. The Act also creates the Natural Gas Consumer Education Advisory Board, and provides for a private right of action and for the application of the Fair Business Practices Act of 1975. Finally, the Act changes certain provisions relating to the Universal Service Fund (USF) and provides for a regulated provider to serve low-income residential consumers and consumers unable to get service from marketers.

EFFECTIVE DATE: April 25, 2002

History

In 1996, Atlanta Gas Light Company, Atlanta's regulated gas monopoly, lobbied for the deregulation of the natural gas industry.¹ The General Assembly hoped that switching from a regulated monopoly to a competitive market would lower prices and improve customer service.² Both houses unanimously approved the deregulation legislation.³

Customers met deregulation with complaints and confusion, which reached a high point in 2001 when gas prices soared due to record cold temperatures and reduced supply.⁴ The increased demand and lower supply would have caused an increase under any system, but the blame came down squarely on deregulation.⁵ The increased costs during the winter of 2001 did not go down during the following summer as marketers were attempting to recover from bad debts accumulated during the winter.⁶

1. Heather Browning, *Review of Selected 1997 Georgia Legislation*, 14 GA. ST. U. L. REV. 264 (1997).

2. Matthew C. Quinn *Turning Up Heat on Gas Debate*, ATLANTA J. CONST., Mar. 17, 2002.

3. *Id.*

4. Memorandum from Rep. Jimmy Skipper, House District No. 137, to the Members of the Georgia House of Representatives (Apr. 15, 2002) (on file with Georgia State University Law Review).

5. *Id.*

6. *Id.*

Governor Roy Barnes appointed a Blue Ribbon Task Force to study and make recommendations regarding the problems associated with deregulation.⁷ The Task Force rejected re-regulation as a solution due to concerns of consumer confusion, further price increases, and possible state liability to the marketers under a legislative taking claim.⁸ HB 1568 is largely the result of the Task Force's recommendations.⁹

HB 1568

Introduction

Representatives Charlie Smith of the 175th District, Newt Hudson of the 156th District, Jimmy Skipper of the 137th District, Mark Burkhalter of the 41st District, Henrietta Turnquest of the 73rd District, and Winfred Dukes of the 161st District sponsored HB 1568.¹⁰ The bill was introduced in the House on February 25, 2002.¹¹ The House assigned the bill to its House Industry Committee, which favorably reported the bill, by substitute, on March 7, 2002.¹² The House passed the bill, as substituted, on March 19, 2002.¹³ On March 25, 2002, the Senate assigned the bill to its Finance and Public Utilities Committee, which created its own substitute and favorably reported the bill on April 3, 2002.¹⁴ The Senate adopted the Finance and Public Utilities Committee substitute and passed the bill, as substituted, on April 9, 2002.¹⁵ The Senate and House appointed a Conference Committee on April 10, 2002, and both Houses approved of the Conference Committee report on April 12, 2002.¹⁶

7. *Id.*

8. *Id.*

9. *Id.*

10. HB 1568, as introduced, 2002 Ga. Gen. Assem.

11. State of Georgia Final Composite Status Sheet, HB 1568, Apr. 12, 2002.

12. *Id.*

13. Georgia House of Representatives Voting Record, HB 1568 (Mar. 19, 2002).

14. State of Georgia Final Composite Status Sheet, HB 1568, Apr. 12, 2002.

15. Georgia Senate Voting Record, HB 1568 (Apr. 9, 2002).

16. Georgia House Voting Record, HB 1568 (Apr. 10, 2002), Georgia Senate Voting Record, HB 1568 (Apr. 12, 2002).

The House forwarded the bill to Governor Roy Barnes on April 18, 2002.¹⁷ Governor Barnes signed the bill into law on April 25, 2002.¹⁸

Consideration by the House Industry Committee

Upon introduction, the House assigned the bill to its Industry Committee, which favorably reported the bill, by substitute, on March 7, 2002.¹⁹

Consideration by the House

On March 19, 2002, Representative Smith of the 175th District presented the bill on the House floor.²⁰ Representative Skipper of the 137th District outlined the sections of the bill and Representative Burkhalter of the 41st District explained the EMC's (electric membership corporation) involvement in the bill.²¹ Representative David Lucas of the 124th District proposed a floor amendment to delete provisions allowing EMC's to provide natural gas service and to eliminate a designated marketer to provide for low-income families.²² Representative Jeffery Williams of the 83rd District proposed a floor amendment to change the definition of a consumer within the Consumers' Bill of Rights to include small businesses.²³ Representative Allen Hammtree of the 4th District proposed a floor amendment to allow any party involved in a proceeding in front of the commission to use the provisions of the Civil Practice Act to allow all sides to have access to each party's information.²⁴ Representative Georganna Sinkfield and Representative Kathy Cox, of the 57th and 105th Districts, respectively, expressed concern over the definition of "low-income family" that would be allowed to use the designated marketer.²⁵ Representative James McKinney of the

17. State of Georgia Final Composite Status Sheet, HB 1568, Apr. 12, 2002.

18. *Id.*

19. State of Georgia Final Composite Status Sheet, HB 1568, Apr. 12, 2002.

20. Audio Recording of the House Proceedings, Mar. 19, 2002 (remarks by Rep. Charlie Smith), at <http://www.ga.us/services/leg/audio/2002archive> [hereinafter House Audio].

21. *Id.* (remarks by Rep. Jimmy Skipper and Rep. Mark Burkhalter).

22. *Id.* (remarks by Rep. David Lucas).

23. *Id.* (remarks by Rep. Jeffery Williams).

24. *Id.* (remarks by Rep. Allan Hammtree).

25. *Id.* (remarks by Rep. Georganna Sinkfield and Rep. Kathy Cox).

51st District suggested Georgia should re-regulate its gas marketers.²⁶ The House voted down all three floor amendments.²⁷ The House then voted to adopt the committee substitute and passed the bill by a vote of 173-3.²⁸

Consideration by the Senate Finance and Public Utilities

Upon introduction, the Senate assigned the bill to its Finance and Public Utilities Committee, which favorably reported, by substitute, on April 3, 2002.²⁹

Consideration by the Senate

On April 9, 2002, Senator Steve Thompson of the 33rd District presented the bill on the Senate Floor.³⁰ Senator Thompson outlined the differences in HB 1568 and SB 500.³¹ Discovery portions from SB 500 were stricken, a refund fund for customers was established, and a majority interest provisions was included that established that fifty percent or more of a partnership interest constituted a majority interest in relation to the control of entities.³² Senator Thompson also noted that HB 1568 allowed anyone to perform meter-reading tasks without becoming a sophisticated marketer.³³ Moreover, the formula used for the surcharge on interruptibles is one percent of the index price for natural gas.³⁴ Section 11 established emergency directives that would allow temporary directives to protect members of endangered consumers, while Section 14 would allow the PFC to establish rules governing natural gas services.³⁵ Section 17 would also allow any amount in the Universal Service Fund (USF) available

26. House Audio, *supra* note 20 (remarks by Rep. James McKinney).

27. Georgia House of Representatives Voting Record, HB 1568 (Mar. 19, 2002).

28. *Id.*

29. State of Georgia Final Composite Status Sheet, HB 1568, Apr. 12, 2002.

30. Audio Recording of the Senate Proceedings, Apr. 9, 2002 (remarks by Sen. Steve Thompson), at <http://www.ga.us/services/leg/audio/2002archive> [hereinafter Senate Audio].

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

to consumers for a refund whenever necessary.³⁶ Senator Regina Thomas of the 2nd District, introduced a floor substitute to HB 1568, but later withdrew it.³⁷ The Senate passed HB 1568, as substituted, by a vote of 36 to 16.³⁸

Conference Committee

On April 10, 2002, the House and the Senate each appointed members to a Conference Committee for HB 1568.³⁹ The Conference Committee reported its substitute on April 12, 2002.⁴⁰ Senator Thompson moved that the Senate adopt the Conference Committee report on HB 1568.⁴¹ The Senate adopted the Conference Committee report by a vote of 32 to 14.⁴² The House also adopted the Conference Committee report by a vote of 159 to 3.⁴³

The Act

Code Section 46-2-25

The Act amends Code section 46-2-25 by adding a new subsection clarifying that nothing in this Code section limits the Public Service Commission's (PSC's) authority to initiate earnings review hearings.⁴⁴

Code Section 46-2-26

The Act amends Code section 46-2-26 by changing the number of days that the Commission has to respond to a rate proposal from forty-five days to ninety days.⁴⁵

36. Senate Audio, *supra* note 30 (remarks by Sen. Steve Thompson).

37. Senate Audio, *supra* note 30 (remarks by Sen. Regina Thomas).

38. Georgia Senate Voting Record, HB 1568 (Apr. 9, 2002).

39. State of Georgia Final Composite Status Sheet, HB 1568, Apr. 12, 2002.

40. *Id.*

41. Senate Audio, *supra* note 30 (remarks by Sen. Steve Thompson).

42. Georgia Senate Voting Record, HB 1568 (Apr. 12, 2002).

43. Georgia House of Representatives Voting Record, HB 1568 (Apr. 12, 2002).

44. O.C.G.A. § 46-2-25 (Supp. 2002).

45. Compare 1979 Ga. Laws 1312, § 1, at 1313 (formerly found at O.C.G.A. § 46-2-26 (2001)), with O.C.G.A. § 46-2-26 (Supp. 2002).

Code Section 46-2-26.4

The Act amends Code section 46-2-26.4 by requiring the gas utility to file, in any proceeding commenced after April 1, 2002, jurisdictionally allocated costs of service data fully adjusted separately to reflect estimated operations during the twelve months following the proposed effective date of the rates.⁴⁶ Thus, under the Act, gas utilities' rate cases are dealt with in the same manner as electric utility rate cases by the PSC.⁴⁷

Code Section 46-2-95

The Act inserts a new Code section, 46-2-95, which allows the PSC to "bring a civil action to enjoin the violation of any law administered by the [PSC] or any rule, order, or regulation established by the [PSC]."⁴⁸

Code Section 46-4-151

The Act amends Code section 46-4-151 by establishing a Consumers' Bill of Rights.⁴⁹ The amendment establishes that all consumers of natural gas deserve to receive natural gas service "on reasonable terms and at reasonable prices," and the focus of this bill is to protect natural gas consumers.⁵⁰ The Consumers' Bill of Rights provides consumers with "the right to receive accurate and easily understood information" and bills; provides standards for protecting consumers in deposit, credit requirements, service disconnection matters; provides requirements that protect consumers from unfair, deceptive, fraudulent, and anti-competitive practices; provides that a consumer shall receive accurate and timely bills from marketers; provides for privacy protection for consumers; provides for protection from price increases resulting from inequitable price

46. Compare 1991 Ga. Laws 1705, § 1, at 1706 (formerly found at O.C.G.A. § 46-2-26.4 (2001)), with O.C.G.A. § 46-2-26.4 (Supp. 2002).

47. *Id.*

48. O.C.G.A. § 46-2-95 (Supp. 2002).

49. Compare 1997 Ga. Laws 798, § 4, at 803 (formerly found at O.C.G.A. § 46-4-151 (2001)), with O.C.G.A. § 46-4-151 (Supp. 2002).

50. O.C.G.A. § 46-4-151 (Supp. 2002).

shifting; and provides that the consumer shall have “the right to a fair and efficient process for resolving differences with marketers.”⁵¹

Code Section 46-4-152

The Act amends Code section 46-4-152 by changing definitions created in the original Act.⁵² The Act also provides that any qualified person may handle meter reading “turn-on and turn-off service.”⁵³ This section also provides that the term “gas activities” excludes “the production, transportation, marketing, or distribution of liquefied petroleum [LP] gas.”⁵⁴ Finally, this section defines the terms “low-income residential consumer,” “electric membership corporation” (EMC), “cramming” and “slamming,” and “EMC affiliate.”⁵⁵

Code Section 46-4-153

The Act amends Code section 46-4-153 by providing that the PSC may review, at any time, the requirement that gas marketers must have the financial and technical capability to render and offer service to natural gas customers.⁵⁶

Code Section 46-4-153.1

The Act adds Code section 46-4-153.1, which allows the PSC to authorize EMC gas affiliates as natural gas marketers.⁵⁷ However, cross-subsidization between the EMC electric utility and the EMC natural gas affiliate are prohibited.⁵⁸ Finally, the costs of electric activities and natural gas activities must be fully allocated.⁵⁹

51. *Id.*

52. *Compare* 1997 Ga. Laws 798, § 4, at 804 (formerly found at O.C.G.A. § 46-4-152 (2001)), *with* O.C.G.A. § 46-4-152 (Supp. 2002).

53. *Id.*

54. O.C.G.A. § 46-4-152 (Supp. 2002).

55. *Id.*

56. *Compare* 1997 Ga. Laws 798, § 4, at 805 (formerly found at O.C.G.A. § 46-4-153 (2001)), *with* O.C.G.A. § 46-4-153 (Supp. 2002).

57. O.C.G.A. § 46-4-153.1 (Supp. 2002).

58. *Id.*

59. *Id.*

Code Section 46-4-154

The Act amends Code section 46-4-154 by altering the current requirement that the PSC use a straight fixed variable method of rate design.⁶⁰ Under current law, the base charge to customers was divided equally over a twelve-month period regardless of the amount of gas used in a particular month.⁶¹ Under the regulated system, the base charge was based on volumetric rate design that changed with gas usage.⁶² This amendment allows the PSC to change the straight fixed variable method after a hearing, if the change is in the best interest of consumers and other interested parties.⁶³ The section also provides that when a consumer's gas meter is turned off, that consumer is not required to pay a fee for distribution service.⁶⁴

Further, ninety-five percent of charges paid by interruptible customers will be deposited into the USF, and Atlanta Gas Light (AGL) will retain five percent of the charges.⁶⁵ This increases the amount paid into the Universal Service Fund, which is utilized to assist low-income persons in paying their natural gas bills and can be utilized for natural gas refunds to new retail customers under the new law.⁶⁶

Additionally, the Act allows a surcharge to be added to interruptible customers.⁶⁷ An interruptible customer is generally a large industrial customer who may have its natural gas service interrupted on cold days, when the gas supply must be rerouted to residential and small business for heating.⁶⁸ Residential and small business customers are considered firm customers.⁶⁹ The allowed surcharge from this section is in addition to that which is paid into

60. Compare 1997 Ga. Laws 798, § 4, at 807 (formerly found at O.C.G.A. § 46-4-154 (2001)), with O.C.G.A. § 46-4-154 (Supp. 2002).

61. *Id.*

62. Memorandum from Rep. Jimmy Skipper, House District No. 137, to the Members of the Georgia House of Representatives (Apr. 15, 2002) (on file with Georgia State University Law Review).

63. Compare 1997 Ga. Laws 798, § 4, at 807 (formerly found at O.C.G.A. § 46-4-154 (2001)), with O.C.G.A. § 46-4-154 (Supp. 2002).

64. O.C.G.A. § 46-4-154 (Supp. 2002).

65. Compare 1997 Ga. Laws 798, § 4, at 807 (formerly found at O.C.G.A. § 46-4-154 (2001)), with O.C.G.A. § 46-4-154 (Supp. 2002).

66. *Id.*

67. *Id.*

68. Memorandum from Rep. Jimmy Skipper, House District No. 137, to the Members of the Georgia House of Representatives (Apr. 15, 2002) (on file with Georgia State University Law Review).

69. *Id.*

the USF and insures that interruptible customers pay an equitable share of the cost of the distribution system that covers all natural gas consumers.⁷⁰ The amount is determined by the PSC and is deposited into the USF.⁷¹ However, there will be no surcharge for interruptible customers that are for-profit and not-for-profit hospitals which have a Medicare or Medicaid payor mix of at least thirty percent and have “uncompensated write-offs for the provision of charity, indigent, and free health care services of not less than five percent of such hospital’s annual operating expenses.”⁷² Finally, there will be no surcharge for interruptible customers who are state agencies.⁷³

Code Section 46-4-155

The Act amends Code section 46-4-155 by giving the PSC ninety days to approve a gas capacity supply plan filed by AGL.⁷⁴ The PSC is also authorized to approve a plan for assignment of interstate capacity assets, the right to use a portion of a natural gas pipeline in interstate commerce held by AGL to marketers.⁷⁵ Before the PSC can act, the marketer must show that the assignment will “result in financial benefit to retain firm customers.”⁷⁶ The AGL is authorized to use excess interstate capacity assets available on the open market.⁷⁷

Code Section 46-4-156

The Act amends Code section 46-4-156 by authorizing the PSC to allocate the costs of lost and unaccounted for gas among interruptible and firm retail customers.⁷⁸ A marketer may not charge any customer a service charge for changing to an alternative marketer if the customer has not changed marketers within the previous twelve

70. O.C.G.A. § 46-4-154 (Supp. 2002).

71. *Id.*

72. *Id.*

73. *Id.* at § 46-4-155.

74. Compare 1997 Ga. Laws 798, § 4, at 809 (formerly found at O.C.G.A. § 46-4-155 (2001)), with O.C.G.A. § 46-4-155 (Supp. 2002).

75. O.C.G.A. § 46-4-155 (Supp. 2002).

76. *Id.*

77. *Id.*

78. Compare 1997 Ga. Laws 798, § 4, at 814 (formerly found at O.C.G.A. § 46-4-156 (2001)), with O.C.G.A. § 46-4-156 (Supp. 2002).

months.⁷⁹ The amount of customer deposits charged by marketers is limited to \$150.00, and the Act provides that, where a marketer has required a deposit from a customer and that customer has paid all bills on time for a period of six months, the marketer must refund the deposit within sixty days.⁸⁰ If the marketer has charged a deposit of more than \$150.00, the excess amount over \$150.00 must be refunded within thirty days after the effective date of the new law if the customer is not delinquent on any payments.⁸¹

Code Section 46-4-157

The Act amends Code section 46-4-157 by providing for emergency powers for the PSC with respect to competition and collusion among marketers.⁸² If the PSC finds that there is collusion among marketers over prices, or finds that market conditions are not competitive, or finds that prices paid by firm retail customers are not actually constrained by market forces but are significantly higher than if constrained by market forces, it (the PSC) may temporarily impose orders and directives on marketers, including price regulations.⁸³ A price regulation may not extend past the first day of July in the year immediately following the imposition of the directive, giving the General Assembly time to resolve any problems prior to this expiration date.⁸⁴

Code Section 46-4-158

The Act amends Code section 46-4-158 by requiring AGL to “[c]ooperate with each certified marketer and . . . regulated provider of natural gas.”⁸⁵

79. O.C.G.A. § 46-4-156 (Supp. 2002).

80. *Id.*

81. *Id.*

82. Compare 1997 Ga. Laws 798, § 4, at 817 (formerly found at O.C.G.A. § 46-4-157 (2001)), with O.C.G.A. § 46-4-157 (Supp. 2002).

83. O.C.G.A. § 46-4-157 (Supp. 2002).

84. *Id.*

85. Compare 1997 Ga. Laws 798, § 4, at 818 (formerly found at O.C.G.A. § 46-4-158 (2001)), with O.C.G.A. § 46-4-158 (Supp. 2002).

Code Section 46-4-158.1 through 46-4-158.5

The Act adds new Code sections 46-4-158.1 through 46-4-158.5.⁸⁶ Service quality standards are created for AGL, marketers, and regulated providers.⁸⁷ Fines may be levied by the PSC for violation of these standards and can be imposed in amounts up to \$15,000.00 per incident, plus \$10,000.00 per day.⁸⁸

Policies and procedures for marketers relating to dealings with customers are added.⁸⁹ A customer cannot be disconnected for non-payment sooner than fifteen days after notice of proposed disconnection.⁹⁰ Sending estimated bills to customers is also prohibited unless actual meter readings are not available; moreover, no marketer can send an estimated bill for more than two consecutive months.⁹¹ Requirements for bills sent to consumers include a three day right of recession when a customer signs up for service, notice of the expiration date of a contract between customer and marketers, and easy to read and clear gas bills with respect to the relationship between the customer and the marketer.⁹²

The PSC is required to adopt rules establishing standards for marketer's terms and conditions of service for non-residential and small business customers.⁹³ The PSC is to provide rules to protect non-residential and small business customers in the same way as residential customers where such protections are appropriate and applicable.⁹⁴

Code Section 46-4-160

The Act amends Code section 46-4-160 by requiring the PSC to establish consumer protection rules that encourage marketers to resolve complaints without involving the PSC.⁹⁵ Complaints

86. O.C.G.A. § 46-4-158.1 – 46-4-158.5 (Supp. 2002).

87. *Id.*

88. *Id.*

89. *Id.*

90. O.C.G.A. 46-4-158.1 to -158.5 (Supp. 2002).

91. *Id.*

92. *Id.*

93. *Id.*

94. Compare 1997 Ga. Laws 798, § 4, at 821 (formerly found at O.C.G.A. § 46-4-160 (2001)), with O.C.G.A. § 46-4-160 (Supp. 2002).

95. O.C.G.A. § 46-4-160 (Supp. 2002).

resolved by the PSC require a payment of \$100.00 to the consumer, plus penalties and fines if the marketer violates PSC rules.⁹⁶ Marketers are not allowed to impose a late fee or a penalty for late payment of a bill over \$10.00 or 1.5 percent of the past due balance, whichever is greater.⁹⁷ Penalties are established for false billing, and slamming of customers is deemed illegal.⁹⁸ If a customer is slammed, the marketer cannot collect for natural gas sold to the slammed customer, and any refunds due to the customer by the marketer who switched the customer without his consent must be paid within 30 days from the date the PSC determines the customer was a victim of slamming.⁹⁹ The marketer must pay a penalty of \$1,000.00 for each customer slammed.¹⁰⁰

Code Section 46-4-160.2

The Act amends Code section 46-4-160.2 dealing with the correction of billing errors and requires the marketer to fix a billing error in 30 days.¹⁰¹ The marketer is prevented from imposing a late fee or a penalty on disputed bill amount during the time the bill is in dispute.¹⁰²

Code Section 46-4-160.3 through 46-4-160.5

The Act adds Code sections 46-4-160.3 through 46-4-160.5 and creates the “Natural Gas Consumers Education Advisory Board.”¹⁰³ The Board advises and makes recommendations to the Director of the Consumers’ Utilities Council Division of the Governor’s Office of Consumer Affairs.¹⁰⁴ Any retail customer who is damaged by a violation of billing requirements for marketers in the law may maintain a civil action against the marketer in court.¹⁰⁵ If the

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Compare* 2001 Ga. Laws 1084, § 4, at 1088-89 (formerly found at O.C.G.A. § 46-4-160.2 (2001)), *with* O.C.G.A. § 46-4-160.2 (Supp. 2002).

102. O.C.G.A. § 46-4-160.2 (Supp. 2002).

103. O.C.G.A. § 46-4-160.3 – 46-4-160.5 (Supp. 2002).

104. *Id.*

105. *Id.*

customer is successful, he is entitled to recover actual damages, incidental damages, consequential damages, reasonable damages, reasonable attorney's fees, and court costs.¹⁰⁶ The Fair Business Practices Act of 1975 is incorporated into the natural gas customer-marketer relationship.¹⁰⁷

Code Section 46-4-161

The Act amends Code section 46-4-161 by establishing the Universal Service Fund (USF).¹⁰⁸ The purpose of the fund is (1) “[to assure] that gas is available for sale by marketers to firm retail customers within the territory certificate to each . . . marketer; (2) [to enable] [AGL] to expand its facilities and service in the public interest; (3) [to assist] low-income residential customers in times of emergency,” and is decided by the PSC and customers of the regulated provider. The PSC administers the fund, and the amount collected in any one fiscal year may not exceed \$25 million.¹⁰⁹ The USF is primarily funded by distribution charges paid by interruptible customers.¹¹⁰ The amounts in the USF in excess of \$3 million at the end of the calendar year can be used by the PSC for refunds to all retail customers.¹¹¹

Code Section 46-4-164

The Act amends Code section 46-4-164 by allowing the certification of EMC gas affiliates as gas marketers and establishes division between the EMC and its gas affiliate.¹¹² Neither AGL, certified marketer, nor regulated provider may engage in LP gas business, but does not prevent AGL from using LP [liquefied petroleum] gas to provide for system balancing and peaking services for distribution system.¹¹³

106. *Id.*

107. *Id.*

108. Compare 1997 Ga. Laws 798, § 4, at 822 (formerly found at O.C.G.A. § 46-4-161 (2001)), with O.C.G.A. § 46-4-161 (Supp. 2002).

109. O.C.G.A. § 46-4-161 (Supp. 2002).

110. *Id.*

111. *Id.*

112. Compare 1997 Ga. Laws 798, § 4, at 825 (formerly found at O.C.G.A. § 46-4-164 (2001)), with O.C.G.A. § 46-4-164 (Supp. 2002).

113. O.C.G.A. § 46-6-164 (Supp. 2002).

Code Section 46-4-166

The Act adds new Code section 46-4-166 to create a regulated provider of natural gas to provide natural gas to low-income residential customers and firm natural gas customers who have a bad credit history or are bad credit risks to other marketers.¹¹⁴ The rates of the regulated provider will be regulated by the PSC and funds from the USF can be used with PSC approval to assist in payment of gas bills for low-income customers.¹¹⁵ Low-income persons include those who meet the definition of a person who has qualified for the Low-income Home Energy Assistance Program (LIHEAP) as established by the Georgia Department of Human Resources.¹¹⁶

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114. *Id.* at § 46-4-166.

115. *Id.*

116. *Id.*