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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

*Distribution, Storage, and Sale of Gas: Provide for
Deregulation of Natural Gas Services Upon Findings by the Public
Service Commission; Provide Agency Approval of Capacity Supply Plans;
Establish Obligations of an Electing Distribution Company*

CODE SECTIONS: O.C.G.A. §§ 46-1-6.1, 46-2-23.1 (new), -57
(amended), 46-4-150 to -165 (new)

BILL NUMBER: SB 215

ACT NUMBER: 292

GEORGIA LAWS: 1997 Ga. Laws 798

SUMMARY: The Act allows for deregulation of the natural gas industry if certain conditions are met. These conditions are that thirty-three percent of the market must be served by marketers of gas, eighteen percent of which must be served by at least five marketers that are not affiliated with the distribution company given a monopoly over the distribution of natural gas. Under these conditions, the market is deemed to be competitive and consumers of gas will be notified that they should choose a marketer to provide gas service for them. The Public Service Commission will no longer set the rates for natural gas; the marketers will price the gas themselves. The Act provides that the Public Service Commission will continue to oversee the industry, with the power to discontinue the deregulation program if market conditions are unable to keep the price of natural gas in check.

EFFECTIVE DATE: April 14, 1997¹

History

Under the previous system of natural gas regulation, the Public Service Commission (Commission) dictated the price of gas to be paid by consumers, and priced gas at the same price all year.² Although the price is actually several times higher in winter when demand is higher,

1. The Act became effective upon approval by the Governor.
2. See Telephone Interview with Stephen Lofton, Public Service Commission (Apr. 17, 1997) [hereinafter Lofton Interview].

the cost was averaged over a period of one year so that the amount billed to customers did not change dramatically throughout the year.³ Large consumers were able to take advantage of this system by using dual-fuel systems; they used gas heating during the winter, when the Commission priced gas below market price, then used an alternative form of energy in warmer months when gas was priced above market price and other forms of energy were less expensive.⁴ Under this system, big consumers (generally large corporations) were the most expensive customers to serve, and their gas bills were subsidized by small consumers, including small business owners and residential consumers.⁵

The pipe system to carry natural gas to all consumers was designed with the capacity to heat residences and businesses of all firm customers⁶ on the coldest day of the year.⁷ Interruptible customers, which contracted to have their service terminated when there was insufficient capacity in the system to provide gas to all customers, paid less per unit for gas.⁸ The cost of building and maintaining the pipe system was spread over all customers.⁹ Each customer paid a small hook-up fee, but the majority of the cost was added into the cost of the gas.¹⁰ Thus, those customers who used a larger volume of gas paid a larger portion of the pipe-system cost, even though the cost of installation and maintenance of the pipes was the same regardless of the volume of gas used.¹¹

In the 1996 legislative session, the Atlanta Gas Light Company, the regulated monopoly over gas service in Atlanta, lobbied to have HB 1153 introduced—a measure to deregulate the natural gas industry.¹² In 1996, Senate Majority Leader Sonny Perdue introduced a resolution calling for a study by the Joint Legislative Committee of the impact that deregulation of the industry would have on consumers.¹³ During the 1997 General Assembly, Senator Perdue and others introduced a completely different gas deregulation bill, SB 215.

3. *See id.*

4. *See id.*

5. *See id.*

6. *See id.* A “firm customer” is one whose service will not be shut off when there is not enough capacity in the system to service all customers. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.*

12. *See 1996 Georgia General Assembly; Gas Deregulation Needs Close Look*, ATLANTA J. & CONST., Feb. 8, 1996, at A16.

13. *See id.*

*SB 215**Introduction*

On February 6, 1997, SB 215 was introduced in the Senate and was assigned to the Committee on Finance and Public Utilities.¹⁴ The House passed SB 215 on March 25, and the Senate concurred in the House amendments on March 28.¹⁵ It was signed into law by the Governor on April 14.¹⁶ The final version of the bill reflects many changes requested by the Consumers Utility Counsel Division of the Governor's Office of Consumer Affairs, which ensures consumer protection during the deregulation process.¹⁷ The General Assembly intended for the Commission to retain a large amount of control over the activities of Atlanta Gas Light Company.¹⁸ The Commission has significant influence in rate-making and will control safety aspects of the gas pipe system.¹⁹ Under the deregulated system, the Commission will retain discretion over the price charged for use of the system, and will charge a higher price per user and reduce the volumetric charge on gas to pay for the pipe.²⁰

The "33%-18% Plan"

The "33%-18% plan"²¹ was included in the original version of the bill and was incorporated in the same form throughout each version.²² The market is deemed to have adequate market conditions for deregulation and competitive pricing when the following conditions are met: (1) at least five marketers not affiliated with a distribution company are serving the area; and (2) one-third of the gas is provided through marketers, with at least eighteen percent being provided by marketers not associated with a distribution company.²³ Once the market is deemed competitive, consumers will be notified that rates will be deregulated within 120 days and that they should choose the marketer

14. See Final Composite Status Sheet, Mar. 28, 1997.

15. See *id.*

16. See *id.*

17. See Telephone Interview with Sen. Sonny Perdue, Senate District No. 18 (Apr. 21, 1997) [hereinafter Perdue Interview].

18. See Lofton Interview, *supra* note 2.

19. See *id.*

20. See *id.*

21. This term, "33%-18% plan," was not included in any version of the bill, but was used by the Public Service Commission as a short-hand title to refer to the plan. See *id.*

22. See SB 215, as introduced, 1997 Ga. Gen. Assem.; SB 215 (SCS), 1997 Ga. Gen. Assem.; SB 215 (HCS), 1997 Ga. Gen. Assem.; O.C.G.A. § 46-4-156 (Supp. 1997).

23. See O.C.G.A. § 46-4-156 (Supp. 1997).

they want to serve them.²⁴ Those consumers who do not choose a marketer within the 120-day period will be assigned one of the marketers serving their area on the basis of market share.²⁵ The General Assembly intends for this process to immediately increase the market share of small marketers serving the area.²⁶ It believes that the eighteen percent market share held by five independent marketers will quickly grow following deregulation, and should be sufficient to hold down prices through competition.²⁷

Definition of "Gas Company"

The Act defines "gas company" as one certificated "to construct or operate any pipeline or distribution system, or any extension thereof, for the transportation, distribution, or sale of natural or manufactured gas."²⁸ It provides that a gas company may elect to establish rates "by performance based regulation without regard to methods based strictly upon cost of service, rate base, and rate of return."²⁹ The Commission will then review the plan, approve it or approve it with modifications, if it determines that the plan is in the public interest.³⁰

24. *See id.*

25. *See id.*

26. *See* Perdue Interview, *supra* note 17.

27. *See id.*

28. O.C.G.A. § 46-1-6.1 (Supp. 1997).

29. *Id.* § 46-2-23.1.

30. *See id.* The commission was to take into consideration the extent to which the application:

- (1) Is designed to and is likely to produce lower prices for consumers of natural gas in Georgia;
- (2) Will provide incentives for the gas company to lower its costs and rates;
- (3) Will provide incentives to improve the efficiency and productivity of the gas company;
- (4) Will foster the long-term provision of natural gas service in a manner that will improve the quality and choices of service;
- (5) Is consistent with maintenance and enhancement of safe, adequate, and reliable service and will maintain or improve pre-existing service quality and consumer protection safeguards;
- (6) Will not result in cross-subsidization among or between groups of gas company customers;
- (7) Will not result in cross-subsidization among or between the portion of the gas company's business or operations subject to the alternative form of regulation and any unregulated portion of the business or operations of the gas company or of any of its affiliates;
- (8) Will reduce regulatory delay and cost; and
- (9) Will tend to enhance economic activity in the affected service territory.

See id.

Control by Public Service Commission

The original bill provided for the Commission to maintain significant control over electing distribution companies.³¹ Among its other duties, the Commission would establish rates and charges for each ancillary service, which would be provided by a distribution company that elected to be governed by the Natural Gas Competition and Deregulation Act.³² "Ancillary service" was defined as one that was "ancillary to the receipt or delivery of natural gas, including without limitation storage, balancing, peaking, and customer services."³³ The Commission would establish rates high enough to recover costs "prudently incurred . . . and useful in providing utility service."³⁴ Each of these duties was deleted from the bill in the substitute offered by the House Industry Committee, which eventually became enacted and signed by the Governor into law.³⁵

Ability to Sell Excess Capacity

The Senate Finance and Public Utilities Committee passed a substitute to the original bill, which passed the Senate floor on February 25, 1997.³⁶ The original bill and the Senate Committee substitute provided that a distribution company could sell gas in interstate commerce from the excess capacity not needed to service the local retail customers provided that a certain percentage of the profits be credited back to the firm customers.³⁷ The House Committee substitute added that a gas company must make an annual report to the Commission, which in turn would be served on the Consumer's Utility Counsel Division of the Governor's Office of Consumer Affairs.³⁸

Actions to Establish Just and Reasonable Rates

The Senate Committee substitute added a new Section 3 to the original version of the bill.³⁹ This Section amends Code section 46-2-

31. See SB 215, § 3, as introduced, 1997 Ga. Gen. Assem. An "electing distribution company" is a gas company authorized to operate the gas pipeline that elects to file an application with the commission "to establish just and reasonable rates, including separate rates for unbundled services." See *id.*

32. See *id.*

33. *Id.*

34. *Id.*

35. See SB 215 (HCS), 1997 Ga. Gen. Assem.

36. SB 215 (SCS), 1997 Ga. Gen. Assem.; Final Composite Status Sheet, Mar. 28, 1997.

37. SB 215, as introduced, 1997 Ga. Gen. Assem.; SB 215 (SCS), 1997 Ga. Gen. Assem.

38. SB 215 (HCS), 1997 Ga. Gen. Assem.

39. Compare SB 215, as introduced, 1997 Ga. Gen. Assem. with SB 215 (HCS),

57⁴⁰ to provide that in an action to establish just and reasonable rates by a gas company before the Commission, all parties to the proceeding shall have the same discovery rights available as in a civil action.⁴¹

Consumer Protection Concerns in House Committee Substitute

The House Industry Committee passed a substitute to the bill on March 20, 1997.⁴² The substitute added several provisions for the protection of small consumers, including: (1) the Commission and the Consumers Utility Counsel Division of the Governor's Office of Consumer Affairs will have access to the records of all marketers of gas to ensure compliance with the Commission's rules; (2) funds from the universal service fund will be deposited in an interest-bearing escrow account for the benefit of the fund; and (3) the time period for Commission control over rates following deregulation should the rates rise more than ten percent is extended to twenty-four months.⁴³ Jim Hurt of the Consumers Utility Counsel Division for the Governor's Office of Consumer Affairs played an integral role in advising the General Assembly on consumer protection mechanisms and lobbying for such protections to be added to SB 215.⁴⁴

Universal Service Fund

The original bill and the first substitute contained a provision for the creation of a universal service fund for each electing distribution company to ensure the availability of gas for all firm customers and to fund expansion of the distribution company's facilities when it is in the public interest.⁴⁵ The money in the fund was intended to be distributed quarterly to the marketers and distribution company.⁴⁶ The House Committee substitute provided more explicit instructions on how the fund would be administered. Money for the fund was to be deposited in a separate interest-bearing escrow account, and interest earned shall benefit the fund itself.⁴⁷ Money deposited in the fund would be distributed quarterly in appropriate portions.⁴⁸

1997 Ga. Gen. Assem.

40. 1979 Ga. Laws 1084, § 1 (formerly found at O.C.G.A. § 46-2-57 (1992)).

41. O.C.G.A. § 46-2-57 (Supp. 1997).

42. See Final Composite Status Sheet, Mar. 28, 1997.

43. See SB 215 (HCS), 1997 Ga. Gen. Assem.

44. See Perdue Interview, *supra* note 17.

45. SB 215, as introduced, 1997 Ga. Gen. Assem.; SB 215 (SCS), 1997 Ga. Gen. Assem.

46. See *id.*

47. See SB 215 (HCS), 1997 Ga. Gen. Assem.

48. See *id.*

The Straight-Fixed Variable Rate Plan

The Act defines "straight fixed variable" as "a rate form in which the fixed costs of providing distribution service are recovered through one or more fixed components and the variable costs are recovered through one or more variable components."⁴⁹ The original bill provided that if the Commission determines that implementation of the straight-fixed variable rate plan would result in large variations in the rates that customers would pay, the plan could be phased in over a period of twelve months.⁵⁰ As part of the compromise with the General Assembly, the Public Service Commission lobbied for a longer phase-in period for the price deregulation.⁵¹ Atlanta Gas Light had stated that the most any customer's rate could increase under the straight-fixed variable plan would be eight percent.⁵² The Commission asked that the bill be changed to put in a fail-safe provision, so that if the price actually rose more than ten percent and proved the Atlanta Gas Light's predictions incorrect, the phase-in period would be extended to two years.⁵³ The House Committee substitute incorporated this change.⁵⁴

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49. O.C.G.A. § 46-4-152 (Supp. 1997).

50. SB 215, as introduced, 1997 Ga. Gen. Assem.

51. See Lofton Interview, *supra* note 2.

52. See *id.*

53. See *id.*

54. See O.C.G.A. § 46-4-152(4)(b)(2) (Supp. 1997).